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STATE OF NORTH CAROLINA

SESSION LAWS AND RESOLUTIONS

PASSED BY THE
1997 GENERAL ASSEMBLY
AT ITS
EXTRA SESSION 1998
BEGINNING ON
TUESDAY, THE TWENTY-FOURTH DAY OF
MARCH, A.D. 1998

AND AT ITS
REGULAR SESSION 1998
BEGINNING ON
MONDAY, THE ELEVENTH DAY OF
MAY, A.D. 1998
HELD IN THE CITY OF RALEIGH

ISSUED BY
SECRETARY OF STATE ELAINE F. MARSHALL

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STATE OF NORTH CAROLINA

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HAROLD J. BRUBAKER.....	Speaker of the House of Representatives.....	Randolph

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election and comprising the Council of State)

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HARLAN E. BOYLES.....	Treasurer.....	Wake
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HARRY E. PAYNE, JR.	Commissioner of Labor	New Hanover
JAMES E. LONG	Commissioner of Insurance	Alamance

The political affiliation of each legislator and member of the Council of State listed on this and the following pages is Democratic unless designated Republican by the abbreviation (R).

G.S. 147-16.1 authorizes publication of Executive Orders of the Governor in the Session Laws of North Carolina. Executive Orders from Governor Hunt are carried in the appendix to this volume.

1997 GENERAL ASSEMBLY

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LEROY CLARK, JR.	Reading Clerk	Wendell, Wake County
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8	JOHN KERR	Wayne	Goldsboro
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13	JEANNE H. LUCAS	Durham	Durham
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14	ERIC MILLER REEVES	Wake	Raleigh
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17	AARON W. PLYLER	Union	Monroe
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29	THOMAS K. JENKINS	Macon	Franklin
30	DAVID WEINSTEIN	Robeson	Lumberton
31	WILLIAM N. MARTIN	Guilford	Greensboro
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34	T. L. ODOM	Mecklenburg	Charlotte
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37	WALTER DALTON	Rutherford	Rutherfordton
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42	ROBERT C. CARPENTER (R)	Macon	Franklin

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SUSAN JOHNSON.....	Reading Clerk.....	Raleigh, Wake County
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REPRESENTATIVES

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18	JOHN W. HURLEY.....	Cumberland.....	Fayetteville
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22**	GORDON P. ALLEN.....	Person.....	Roxboro
22	JAMES W. CRAWFORD, JR.....	Granville.....	Oxford
22*	MICHAEL S. WILKINS.....	Person.....	Roxboro
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23	HENRY M. MICHAUX, JR.....	Durham.....	Durham
23	GEORGE W. MILLER, JR.....	Durham.....	Durham
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38	HAROLD J. BRUBAKER (R).....	Randolph.....	Asheboro
39	LYONS GRAY (R).....	Forsyth.....	Winston-Salem
40	REX L. BAKER (R).....	Stokes.....	King
40	WILLIAM S. HIATT (R).....	Surry.....	Mt. Airy

* Resigned September 15, 1997

** Appointed October 9, 1997

40	W. EUGENE WILSON (R).....	Watauga.....	Boone
41	JOHN W. BROWN (R).....	Wilkes.....	Elkin
41	GEORGE M. HOLMES (R).....	Yadkin.....	Hamptonville
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63	JANE H. MOSLEY.....	Wake.....	Cary
64	ROBERT J. HENSLEY, JR.....	Wake.....	Raleigh
65	RICK EDDINS (R).....	Wake.....	Raleigh
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97	JERRY BRASWELL.....	Wayne.....	Goldsboro
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TERRENCE D. SULLIVAN.....	Director of the Research Division
J. MICHAEL MINSHEW	Building Superintendent and Chief of Security

SESSION LAWS
OF THE
STATE OF NORTH CAROLINA

EXTRA SESSION 1998

S.B. 2 SESSION LAW 1998-1 ES

AN ACT TO ESTABLISH THE HEALTH INSURANCE PROGRAM FOR CHILDREN AND TO AUTHORIZE A TAX CREDIT FOR CERTAIN PURCHASERS OF DEPENDENT HEALTH INSURANCE.

The General Assembly of North Carolina enacts:

Section 1. Article 2 of Chapter 108A of the General Statutes is amended by adding the following new Part to read:

"Part 8. Health Insurance Program for Children.

"§ 108A-70.18. Definitions.

Unless the context clearly requires otherwise, the term:

- (1) 'Comprehensive health coverage' means creditable health coverage as defined under Title XXI.
- (2) 'Family income' has the same meaning as used in determining eligibility for the Medical Assistance Program.
- (3) 'FPL' or 'federal poverty level' means the federal poverty guidelines established by the United States Department of Health and Human Services, as revised each April 1.
- (4) 'Medical Assistance Program' means the State Medical Assistance Program established under Part 6 of Article 2 of Chapter 108A of the General Statutes.
- (5) 'Program' means The Health Insurance Program for Children established in this Part.
- (6) 'State Plan' means the State Child Health Plan for the State Children's Health Insurance Program established under Title XXI.
- (7) 'Title XXI' means Title XXI of the Social Security Act, as added by Pub. L. 105-33, 111 Stat. 552, codified in scattered sections of 42 U.S.C. (1997).
- (8) 'Uninsured' means the applicant for Program benefits was not covered under any private or employer-sponsored comprehensive health insurance plan for the six-month period immediately preceding the date the Program becomes effective. Effective six

months from date the Program becomes effective, 'uninsured' means the applicant is and was not covered under any private or employer-sponsored comprehensive health insurance plan for 60 days immediately preceding the date of application. The waiting periods required under this subdivision shall be waived if the child has lost Medicaid eligibility due to a change in family income or has lost employer-sponsored comprehensive health care coverage due to termination of employment, cessation by the employer of employer-sponsored health coverage, or cessation of the employer's business.

" § 108A-70.19. Short title; purpose; no entitlement.

This Part may be cited as 'The Health Insurance Program for Children Act of 1998.' The purpose of this Part is to provide comprehensive health insurance coverage to uninsured low-income children who are residents of this State. Coverage shall be provided from federal funds received, State funds appropriated, and other nonappropriated funds made available for this purpose. Nothing in this Part shall be construed as obligating the General Assembly to appropriate funds for the Program or as entitling any person to coverage under the Program.

" § 108A-70.20. Program established.

The Health Insurance Program for Children is established. The Program shall be administered by the Department of Health and Human Services in accordance with this Part and as required under Title XXI and related federal rules and regulations. Administration of Program benefits and claims processing shall be as provided under Part 5 of Article 3 of Chapter 135 of the General Statutes.

" § 108A-70.21. Program eligibility; benefits; enrollment fee and other cost-sharing; coverage from private plans; purchase of extended coverage.

(a) Eligibility. -- The Department may enroll eligible children based on availability of funds. Following are eligibility and other requirements for participation in the Program:

(1) Children must:

- a. Be under the age of 19;
- b. Be ineligible for Medicaid, Medicare, or other federal government-sponsored health insurance;
- c. Be uninsured;
- d. Be in a family that meets the following family income requirements:
 1. Infants under the age of one year whose family income is from one hundred eighty-five percent (185%) through two hundred percent (200%) of the federal poverty level;
 2. Children age one year through five years whose family income is above one hundred thirty-three percent (133%) through two hundred percent (200%) of the federal poverty level; and
 3. Children age six years through eighteen years whose family income is above one hundred percent (100%) through two hundred percent (200%) of the federal poverty level;
- e. Be a resident of this State and eligible under federal law; and

f. Have paid the Program enrollment fee required under this Part.

- (2) Proof of family income and residency and declaration of uninsured status shall be provided by the applicant at the time of application for Program coverage. The family member who is legally responsible for the children enrolled in the Program has a duty to report any change in the enrollee's status within 60 days of the change of status.
- (3) If a responsible parent is under a court order to provide or maintain health insurance for a child and has failed to comply with the court order, then the child is deemed uninsured for purposes of determining eligibility for Program benefits if at the time of application the custodial parent shows proof of agreement to notify and cooperate with the child support enforcement agency in enforcing the order.

If health insurance other than under the Program is provided to the child after enrollment and prior to the expiration of the eligibility period for which the child is enrolled in the Program, then the child is deemed to be insured and ineligible for continued coverage under the Program. The custodial parent has a duty to notify the Department within 10 days of receipt of the other health insurance, and the Department, upon receipt of notice, shall disenroll the child from the Program. As used in this paragraph, the term 'responsible parent' means a person who is under a court order to pay child support.

- (4) Except as otherwise provided in this section, enrollment shall be continuous for one year. At the end of each year, applicants may reapply for Program benefits.

(b) Benefits. -- Except as otherwise provided for eligibility, fees, deductibles, copayments, and other cost-sharing charges, health benefits coverage provided to children eligible under the Program shall be equivalent to coverage provided for dependents under the North Carolina Teachers' and State Employees' Comprehensive Major Medical Plan, including optional prepaid plans. Prescription drug providers shall accept as payment in full, for outpatient prescriptions filled, ninety percent (90%) of the average wholesale price for the prescription drug or the amounts published by the Health Care Financing Administration plus a fee established by the provider not to exceed the amount authorized under subdivision (d)(3) of this section. All other health care providers providing services to Program enrollees shall accept as payment in full for services rendered the maximum allowable charges under the North Carolina Teachers' and State Employees' Comprehensive Major Medical Plan for services less any copayments assessed to enrollees under this Part. No child enrolled in the Plan's self-insured indemnity program shall be required by the Plan to change health care providers as a result of being enrolled in the Program.

In addition to the benefits provided under the Plan, the following services and supplies are covered under the Health Insurance Program for Children established under this Part:

- (1) Dental: Oral examinations, teeth cleaning, and scaling twice during a 12-month period, full mouth X rays once every 60 months, supplemental bitewing X rays showing the back of the teeth once during a 12-month period, fluoride applications once during a 12-month period, and routine fillings of amalgam or other tooth-colored filling material to restore diseased teeth. No benefits are to be provided for services under this subsection that are not performed by or upon the direction of a dentist, doctor, or other professional provider approved by the Plan nor for services and materials that do not meet the standards accepted by the American Dental Association.
- (2) Vision: Scheduled routine eye examinations once every 12 months, eyeglass lenses or contact lenses once every 12 months, routine replacement of eyeglass frames once every 24 months, and optical supplies and solutions when needed. Optical services, supplies, and solutions must be obtained from licensed or certified ophthalmologists, optometrists, or optical dispensing laboratories. Eyeglass lenses are limited to single vision, bifocal, trifocal, or other complex lenses necessary for a Plan enrollee's visual welfare. Coverage for oversized lenses and frames, designer frames, photosensitive lenses, tinted contact lenses, blended lenses, progressive multifocal lenses, coated lenses, and laminated lenses is limited to the coverage for single vision, bifocal, trifocal, or other complex lenses provided by this subsection. Eyeglass frames are limited to those made of zylonite, metal, or a combination of zylonite and metal. All visual aids covered by this subsection require prior approval of the Plan. Upon prior approval by the Plan, refractions may be covered more often than once every 12 months.
- (3) Hearing: Auditory diagnostic testing services and hearing aids and accessories when provided by a licensed or certified audiologist, otolaryngologist, or other hearing aid specialist approved by the Plan. Prior approval of the Plan is required for hearing aids, accessories, earmolds, repairs, loaners, and rental aids.

(c) Annual Enrollment Fee. -- There shall be no enrollment fee for Program coverage for enrollees whose family income is at or below one hundred fifty percent (150%) of the federal poverty level. The enrollment fee for Program coverage for enrollees whose family income is above one hundred fifty percent (150%) of the federal poverty level shall be fifty dollars (\$50.00) per year per child with a maximum annual enrollment fee of one hundred dollars (\$100.00) for two or more children. The enrollment fee shall be collected by the county department of social services and retained to cover the cost of determining eligibility for services under the Program. County departments of social services shall establish procedures for the collection of enrollment fees.

(d) Cost-Sharing. -- There shall be no deductibles, copayments, or other cost-sharing charges for families covered under the Program whose family income is at or below one hundred fifty percent (150%) of the federal poverty level. Families covered under the Program whose family income is

above one hundred fifty percent (150%) of the federal poverty level shall be responsible for copayments to providers as follows:

- (1) Five dollars (\$5.00) per child for each visit to a provider, except that there shall be no copayment required for well-baby, well-child, or age-appropriate immunization services;
- (2) Five dollars (\$5.00) per child for each outpatient hospital visit;
- (3) A six-dollar (\$6.00) fee for each outpatient prescription drug purchased;
- (4) Twenty dollars (\$20.00) for each emergency room visit unless:
 - a. The child is admitted to the hospital, or
 - b. No other reasonable care was available as determined by the Claims Processing Contractor of the North Carolina Teachers' and State Employees' Comprehensive Major Medical Plan.

Copayments required under this subsection for prescription drugs apply only to prescription drugs prescribed on an outpatient basis.

(e) Cost-Sharing Limitations. -- The total annual aggregate cost-sharing, including fees, with respect to all children in a family receiving Program benefits under this Part shall not exceed five percent (5%) of the family's income for the year involved. To assist the Department in monitoring and ensuring that the limitations of this subsection are not exceeded, the Executive Administrator and Board of Trustees of the North Carolina Teachers' and State Employees' Comprehensive Major Medical Plan shall provide data to the Department showing cost-sharing paid by Program enrollees.

(f) Coverage From Private Plans. -- The Department shall, from funds available for the Program, pay the cost for dependent coverage provided under a private insurance plan for persons eligible for coverage under the Program if all of the following conditions are met:

- (1) The person eligible for Program coverage requests to obtain dependent coverage from a private insurer in lieu of coverage under the Program and shows proof that coverage under the private plan selected meets the requirements of this subsection;
- (2) The dependent coverage under the private plan is actuarially equivalent to the coverage provided under the Program and the private plan does not engage in the exclusive enrollment of children with favorable health care risks;
- (3) The cost of dependent coverage under the private plan is the same as or less than the cost of coverage under the Program; and
- (4) The total annual aggregate cost-sharing, including fees, paid by the enrollee under the private plan for all dependents covered by the plan, do not exceed five percent (5%) of the enrollee's family income for the year involved.

The Department may reimburse an enrollee for private coverage under this subsection upon a showing of proof that the dependent coverage is in effect for the period for which the enrollee is eligible for the Program.

(g) Purchase of Extended Coverage. -- An enrollee in the Program who loses eligibility due to an increase in family income above two hundred percent (200%) of the federal poverty level and up to and including two hundred twenty-five percent (225%) of the federal poverty level may

purchase at full premium cost continued coverage under the Program for a period not to exceed one year beginning on the date the enrollee becomes ineligible under the income requirements for the Program. The same benefits, copayments, and other conditions of enrollment under the Program shall apply to extended coverage purchased under this subsection.

(h) No State Funds for Voluntary Participation. -- No State or federal funds shall be used to cover, subsidize, or otherwise offset the cost of coverage obtained under subsection (g) of this section.

"§ 108A-70.22. Allocation of federal and State funds for Program; consultation with Joint Legislative Health Care Oversight Committee.

The Department of Health and Human Services, after having consulted with and received advice from the Joint Legislative Health Care Oversight Committee established under G.S. 120-70.110, shall from total funds available to the Department for Program implementation, allocate and adjust, as needed, funds to pay the North Carolina Teachers' and State Employees' Major Medical Plan in accordance with G.S. 108A-70.23 and Part 5 of Article 3 of Chapter 135 of the General Statutes, and funds to pay for eligible services provided for children with special needs in accordance with G.S. 108A-70.23.

"§ 108A-70.23. Services for children with special needs established; definition; eligibility; services; limitation; recommendations; no entitlement.

(a) The Department shall, from federal funds received and State funds appropriated for the Program, pay for services for children with special needs as authorized under this section. As used in this section, the term 'children with special needs' or 'special needs child' means children who have been diagnosed as having one or more of the following conditions which in the opinion of the diagnosing physician (i) is likely to continue indefinitely, (ii) interferes with daily routine, and (iii) require extensive medical intervention and extensive family management:

- (1) Birth defect, including genetic, congenital, or acquired disorders;
- (2) Developmental disability as defined under G.S. 122C-3;
- (3) Mental or behavioral disorder; or
- (4) Chronic and complex illnesses.

(b) Eligibility for Services. -- In order to be eligible for services under this section a special needs child must be enrolled in the Program.

(c) Services Provided. -- The services authorized to be provided to children eligible under this section are as follows:

- (1) The same level of services as provided for special needs children under the Medical Assistance Program as authorized in the Current Operations Appropriations Act except that no services for long-term care shall be provided under this section, and except that services for respite care shall be provided only under emergency circumstances; and
- (2) Only those services eligible under this section that are not covered or otherwise provided under Part 5 of Article 3 of Chapter 135 of the General Statutes.

(d) Limitation. -- Funds may be expended for services under this section only if the special needs child is enrolled in the Program, the services provided under this section are not provided under Part 5 of Article 3 of

Chapter 135 of the General Statutes, and the child meets the definition of a special needs child under this section.

(e) Case Management Services. -- The Department shall develop procedures for the provision of case management services by the Department to eligible special needs children. Case management services shall be developed to ensure to the maximum extent possible that services are provided in the most efficient and effective manner considering the special needs of the child. The cost of providing case management services for children with special needs shall be paid from funds available for services under this section.

(f) Recommendations by Commission on Children With Special Health Care Needs. -- In implementing this section the Department shall consider the recommendations of the Commission on Children With Special Health Care Needs established under Article 71 of Chapter 143 of the General Statutes. The Department, in consultation with the Commission on Children With Special Health Care Needs shall develop procedures for providing respite care services under emergency circumstances.

(g) No Entitlement. -- Nothing in this section shall be construed as entitling any person to services under this section.

"§ 108A-70.24. Claims processing; payments.

(a) The North Carolina Teachers' and State Employees' Comprehensive Major Medical Plan shall be responsible for the administration and processing of claims for benefits under the Program, as provided under Part 5 of Article 3 of Chapter 135 of the General Statutes.

(b) The Department shall, from State and federal appropriations, and from any other funds made available for this purpose, make premium payments to the North Carolina Teachers' and State Employees' Comprehensive Major Medical Plan as determined by the Plan for its administration, claims processing, and other services authorized to provide coverage for acute medical care to children eligible for benefits under this Part.

(c) The North Carolina Teachers' and State Employees' Comprehensive Major Medical Plan shall also be responsible for the administration and processing of claims for benefits provided under G.S. 108A-70.23 and not covered by Part 5 of Article 3 of Chapter 135 of the General Statutes. Such claims payments shall be made against accounts maintained by the Department.

"§ 108A-70.25. State Plan for Health Insurance Program for Children.

The Department shall develop and submit a State Plan to implement 'The Health Insurance Program for Children' authorized under this Part to the federal government as application for federal funds under Title XXI. The State Plan submitted under this Part shall be developed by the Department only as authorized by and in accordance with this Part. No provision in the State Plan submitted under this Part may expand or otherwise alter the scope or purpose of the Program from that authorized under this Part. The Department shall include in the State Plan submitted only those items required by this Part and required by the federal government to qualify for federal funds under Title XXI and necessary to secure the State's federal fund allotment for the applicable fiscal period. Except as otherwise provided

in this section, the Department shall not amend the State Plan nor submit any amendments thereto to the federal government for review or approval without the specific approval of the General Assembly. In the event federal law requires that an amendment be made to the State Plan and further requires that the amendment be submitted or implemented within a time period when the General Assembly is not and will not be in session to approve the amendment, then the Department may submit the amendment to the federal government for review and approval without the approval of the General Assembly. Prior to submitting an amendment to the federal government without General Assembly approval as authorized in this section, the Department shall report the proposed amendment to the Joint Legislative Health Care Oversight Committee and to members of the Joint Appropriations Subcommittee on Health and Human Services. The report shall include an explanation of the amendment, the necessity therefor, and the federal time limits required for implementation of the amendment.

"§ 108A-70.26. Application process; outreach efforts; appeals.

(a) Application. -- The Department shall use an application form for the Program that is concise, relatively easy for the applicant to comprehend and complete, and only as lengthy as necessary for identifying applicants, determining eligibility for the Program or Medicaid, and providing information to applicants on requirements for application submission and proof of eligibility. Application forms shall be obtainable from public health departments and county departments of social services. Applications shall be processed by the county department of social services and may be submitted by mail. The Department may adopt rules for the submission and processing of applications and for securing the proof of eligibility for benefits under this Part.

The application form for the Program shall have printed on it or attached to it a notice stating substantially: 'The Health Insurance Program for Children' is a federally and State funded program that may be discontinued if federal funds are not provided for its continuation.

(b) Outreach Efforts. -- The Department shall adopt procedures to ensure that the Program is adequately publicized statewide and to comply with federal outreach requirements. The Department shall make information about the Program available through the Internet and shall explore the feasibility of securing a 24-hour toll-free telephone number to facilitate access to Program information. In order to avoid duplication of efforts, in developing outreach procedures the Department shall establish system linkages to ensure the collaboration and coordination of information between and among the Program and such ongoing programs and efforts as:

WIC Program.

Maternal and Child Health Block Grant.

Children's Special Health Services.

Smart Start.

Head Start.

The Department shall seek private and federal grant funds for outreach activities. The Department shall also seek the participation of the private sector in providing no-cost or low-cost avenues for publicizing the Program in local communities and statewide. The Department may work with the

State Health Plan Purchasing Alliance Board to develop programs that utilize the expertise and resources of the Alliances in outreach activities to employees of small businesses.

(c) Appeals. -- A person who is dissatisfied with the action of a county department of social services with respect to the determination of eligibility for benefits under the Program may appeal the action in accordance with G.S. 108A-79.

"§ 108A-70.27. Data collection; reporting.

(a) The Department shall ensure that the following data are collected, analyzed, and reported in a manner that will most effectively and expeditiously enable the State to evaluate Program goals, objectives, operations, and health outcomes for children:

- (1) Number of applicants for coverage under the Program;
- (2) Number of Program applicants deemed eligible for Medicaid;
- (3) Number of applicants deemed eligible for the Program, by income level, age, and family size;
- (4) Number of applicants deemed ineligible for the Program and the basis for ineligibility;
- (5) Number of applications made at county departments of social services, public health departments, and by mail;
- (6) Total number of children enrolled in the Program to date and for the immediately preceding fiscal year;
- (7) Total number of children enrolled in Medicaid through the Program application process;
- (8) Trends showing the Program's impact on hospital utilization, immunization rates, and other indicators of quality of care, and cost-effectiveness and efficiency;
- (9) Trends relating to the health status of children;
- (10) Other data that would be useful in carrying out the purposes of this Part.

(b) The Department shall report annually to the Joint Legislative Health Care Oversight Committee and shall provide a copy of the report to the Joint Appropriations Subcommittees on Health and Human Services. The report shall include:

- (1) Data collected as required under subsection (a) of this section and an analysis thereof giving trends and projections for continued Program funding;
- (2) Program areas working most effectively and least effectively;
- (3) Performance measures used to ensure Program quality, fiscal integrity, ease of access, and appropriate utilization of preventive and medical care;
- (4) Effectiveness of system linkages in addressing access, quality of care, and Program efficiency;
- (5) Recommended changes in the Program necessary to improve Program efficiency and effectiveness;
- (6) Any other information requested by the Committee pertinent to the provision of health insurance for children and the implementation of the Program.

(c) The Executive Administrator and Board of Trustees of the North Carolina Teachers' and State Employees' Major Medical Plan ('Plan') shall provide to the Department data required under this section that are collected by the Plan. Data shall be reported by the Plan in sufficient detail to meet federal reporting requirements under Title XXI. The Plan shall report periodically to the Joint Legislative Health Care Oversight Committee claims processing data for the Program and any other information the Plan or the Committee deems appropriate and relevant to assist the Committee in its review of the Program.

"§ 108A-70.28. Fraudulent misrepresentation.

(a) It shall be unlawful for any person to knowingly and willfully, and with intent to defraud, make or cause to be made a false statement or representation of a material fact in an application for coverage under this Part or intended for use in determining eligibility for coverage.

(b) It shall be unlawful for any applicant, recipient, or person acting on behalf of the applicant or recipient to knowingly and willfully, and with intent to defraud, conceal, or fail to disclose any condition, fact, or event affecting the applicant's or recipient's initial or continued eligibility to receive coverage or benefits under this Part.

(c) It is unlawful for any person knowingly, willingly, and with intent to defraud, to obtain or attempt to obtain, or to assist, aid, or abet another person, either directly or indirectly, to obtain money, services, or any other thing of value to which the person is not entitled as a recipient under this Part, or otherwise to deliberately misuse a Program identification card. This misuse includes the sale, alteration, or lending of the Program identification card to others for services and the use of the card by someone other than the recipient to receive or attempt to receive Program coverage for services rendered to that individual.

Proof of intent to defraud does not require proof of intent to defraud any particular person.

(d) A person who violates a provision of this section shall be guilty of a Class I felony.

(e) For purposes of this section the word 'person' includes any natural person, association, consortium, corporation, body politic, partnership, or other group, entity, or organization."

Section 2. (a) G.S. 120-70.110 reads as rewritten:

"§ 120-70.110. Creation and membership of Joint Legislative Health Care Oversight Committee.

There is established the Joint Legislative Health Care Oversight Committee. The Committee consists of ~~14~~ 16 members as follows:

- (1) ~~Seven~~ Eight members of the Senate appointed by the President Pro Tempore of the Senate, at least three of whom are members of the minority party; and
- (2) ~~Seven~~ Eight members of the House of Representatives appointed by the Speaker of the House of Representatives, at least three of whom are members of the minority party.

Terms on the Committee are for two years and begin on the convening of the General Assembly in each odd-numbered year, except the terms of the initial members, which begin on appointment. Members may complete a

term of service on the Committee even if they do not seek reelection or are not reelected to the General Assembly, but resignation or removal from service in the General Assembly constitutes resignation or removal from service on the Committee.

A member continues to serve until the member's successor is appointed. A vacancy shall be filled within 30 days by the officer who made the original appointment."

(b) Initial terms of the additional members appointed under subsection (a) of this section shall begin upon appointment and shall expire on the convening of the 2001 General Assembly, except if those members are not reelected to serve in the 1999 General Assembly then their terms shall expire upon the convening of the 1999 General Assembly.

(c) G.S. 120-70.111 reads as rewritten:

"§ 120-70.111. *Purpose and powers of Committee.*

(a) The Joint Legislative Health Care Oversight Committee shall review, on a continuing basis, the provision of health care and health care coverage to the citizens of this State; in order to make ongoing recommendations to the General Assembly on ways to improve health care for North Carolinas Carolinians. To this end, the Committee shall study the delivery, availability, and cost of health care in North Carolina. The Committee shall also review, on a continuing basis, the implementation of the State Health Insurance Program for Children established under Part 8 of Article 2 of Chapter 108A of the General Statutes. As part of its review, the Committee shall advise and consult with the Department of Health and Human Services as provided under G.S. 108A-70.21. The Committee may also study other matters related to health care and health care coverage in this State.

(b) The Committee may make interim reports to the General Assembly on matters for which it may report to a regular session of the General Assembly. A report to the General Assembly may contain any legislation needed to implement a recommendation of the Committee.

(c) The Committee may use employees of the Legislative Services Office and may employ contractual services as approved by the Legislative Services Commission to review and monitor, on a continuing basis, the implementation of the Health Insurance Program for Children established under Part 8 of Article 2 of Chapter 108A of the General Statutes. The Committee shall have access to all records of the Department of Health and Human Services pertaining to the Health Insurance Program for Children and shall be kept apprised by the Department of communications between the Department and the Health Care Financing Administration with respect to development, submission, and approval of and amendments to the State Plan for the Health Insurance Program for Children. The Committee and its employees shall also be entitled to attend all meetings and have access to all records of the North Carolina Teachers' and State Employees' Comprehensive Major Medical Plan pertaining to the Health Insurance Program for Children that are not confidential in accordance with G.S. 135-37. G.S. 135-37 shall be applicable to the Health Insurance Program for Children to the same extent that is applicable to teachers and State employees."

Section 3. (a) Chapter 143 of the General Statutes is amended by adding the following new Article to read:

"ARTICLE 71.

"Commission on Children With Special Health Care Needs.

"§ 143-682. Commission established.

(a) There is established the Commission on Children With Special Health Care Needs. The Department of Health and Human Services shall provide staff services and space for Commission meetings. The purpose of the Commission is to monitor and evaluate the availability and provision of health services to special needs children in this State, and to monitor and evaluate services provided to special needs children under the Health Insurance Program for Children established under Part 8 of Article 2 of Chapter 108A of the General Statutes.

(b) The Commission shall consist of seven members appointed by the Governor, as follows:

- (1) A parent of a special needs child;**
- (2) A licensed psychiatrist recommended by the North Carolina Psychiatric Association;**
- (3) A licensed psychologist recommended by the North Carolina Psychological Association;**
- (4) A licensed pediatrician whose practice includes services for special needs children, recommended by the Pediatric Society of North Carolina;**
- (5) A representative of one of the children's hospitals in the State, recommended by the Pediatric Society of North Carolina;**
- (6) A local public health director recommended by the Association of Local Health Directors; and**
- (7) An educator providing education services to special needs children, recommended by the North Carolina Council of Administrators of Special Education.**

(c) The Governor shall appoint from among Commission members the person who shall serve as chair of the Commission. Of the initial appointments, two shall serve one-year terms, two shall serve two-year terms, and three shall serve three-year terms. Thereafter, terms shall be for two years. Vacancies occurring before expiration of a term shall be filled from the same appointment category in accordance with subsection (b) of this section.

"§ 143-683. Powers and duties of the Commission.

The Commission shall have the following powers and duties:

- (1) Study the needs of children with special health care needs in this State for health care services not presently provided or regularly available through State or federal programs or through private or employer-sponsored health insurance plans;**
- (2) Develop guidelines for case management services, quality assurance measures, and periodic evaluations to determine efficacy of health services provided to special needs children;**
- (3) Develop and coordinate an outreach program of case managers to assist children with special health care needs and their families in**

accessing available State and federal resources for all health care services;

- (4) Review rules adopted by the Commission for Health Services pertaining to the provision of services for special needs children and make recommendations for modifications or additions to the rules necessary to improve services to these children or to make service delivery more efficient and effective;
- (5) Review policies and practices of the Department of Health and Human Services and recommend to the Secretary of Health and Human Services changes that would improve implementation of health programs for children with special health care needs;
- (6) Report to each session of the General Assembly not later than the first day of its convening. The report shall include a summary of the Commission's work and any recommendations the Commission may have on ways to improve the efficiency and effectiveness of health services delivery to children with special health care needs in this State. The Commission shall provide a copy of its report to the General Assembly's Commission on Children With Special Needs;
- (7) Study the feasibility of establishing a privately funded risk pool to provide insurance coverage and services for children with special health care needs;
- (8) Make recommendations to the Department and to the Commission for Health Services regarding quality assurance measures and mechanisms to enhance the health outcomes of children with special health care needs;
- (9) Establish subcommittees as necessary to provide assistance and advice to the Commission in conducting its studies and other activities. The Commission may appoint non-Commission members to the subcommittees;
- (10) Seek grants and other funds from private and federal sources to carry out the purposes of this Article; and
- (11) Conduct other activities the Commission deems appropriate and necessary to carry out the purposes of this Article.

"§ 143-684. Compensation and expenses of Commission members; travel reimbursements.

Members of the Commission shall serve without compensation but may receive travel and subsistence as follows:

- (1) Commission members who are officials or employees of a State agency or unit of local government, in accordance with G.S. 138-6.
- (2) All other Commission members at the rate established in G.S. 138-5."

(b) The Governor shall appoint members of the Commission on Children With Special Health Care Needs within 45 days of the date this act becomes law.

Section 4. (a) Article 3 of Chapter 135 of the General Statutes is amended by adding the following new Part to read:

"Part 5. Health Insurance Program for Children.

"§ 135-42. Undertaking.

(a) The State of North Carolina undertakes to make available a health insurance program for children (hereinafter called the 'Program') to provide comprehensive acute medical care to low-income, uninsured children who are residents of this State and who meet the eligibility requirements established for the Program under Part 8 of Article 2 of Chapter 108A of the General Statutes. The Executive Administrator and Board of Trustees of the North Carolina Teachers' and State Employees' Comprehensive Major Medical Plan (hereinafter called the 'Plan') shall administer the Program under this Part and shall carry out their duties and responsibilities in accordance with Parts 2 and 3 of this Article and with applicable provisions of Part 8 of Article 2 of Chapter 108A. The Plan's self-insured indemnity program shall not incur any financial obligations for the Program in excess of the amount of funds that the Plan's self-insured indemnity program receives for the Program.

(b) The benefits provided under the Program shall be equivalent to and made available through the Plan pursuant to Articles 2 and 3 of this Chapter and as provided under G.S. 108A-70.21(b) and administered by the Plan's Executive Administrator and Board of Trustees. To the extent there is a conflict between the provisions of Part 8 of Article 2 of Chapter 108A and Part 3 of this Article pertaining to eligibility, fees, deductibles, copayments, and other cost-sharing charges, the provisions of Part 8 of Article 2 of Chapter 108A shall control. In administering the benefits provided by this Part, the Executive Administrator and Board of Trustees shall have the same type of powers and duties that are provided under Part 3 of this Article for hospital and medical benefits.

(c) The benefits authorized by this Part are available only to children who are residents of this State and who meet the eligibility requirements established for the Program under Part 8 of Article 2 of Chapter 108A of the General Statutes.

"§ 135-42.1. Right to alter, amend, or repeal.

The General Assembly reserves the right to alter, amend, or repeal this Part."

(b) G.S. 135-38(c) reads as rewritten:

"(c) The Committee shall review programs of hospital, medical and related care provided by Part 3 and Part 5 of this Article and programs of long-term care benefits provided by Part 4 of this Article as recommended by the Executive Administrator and Board of Trustees of the Plan. The Executive Administrator and the Board of Trustees shall provide the Committee with any information or assistance requested by the Committee in performing its duties under this Article. The Committee shall meet not less than once each quarter to review the actions of the Executive Administrator and Board of Trustees. At each meeting, the Executive Administrator shall report to the Committee on any administrative and medical policies which have been issued as rules and regulations in accordance with G.S. 135-39.8, and on any benefit denials, resulting from the policies, which have been appealed to the Board of Trustees."

(c) G.S. 135-39.5 is amended by adding a new subdivision to read:

"(23) Implementing and administering a program of child health insurance benefits pursuant to Part 5 of this Article."

(d) G.S. 135-39.6 is amended by adding the following subsection to read:

"(d) Separate and apart from the special funds authorized by subsections (a), (b), and (c) of this section, there shall be a Child Health Insurance Fund. All premium receipts or any other receipts, including earnings on investments, occurring or arising in connection with acute medical care benefits provided under the Health Insurance Program for Children shall be deposited into the Child Health Insurance Fund. Disbursements from the Child Health Insurance Fund shall include any and all amounts required to pay the benefits and administrative costs of the Health Insurance Program for Children as may be determined by the Executive Administrator and Board of Trustees."

(e) G.S. 135-39.6A is amended by adding the following subsection to read:

"(c) The Executive Administrator and Board of Trustees shall establish premium rates for benefits provided under Part 5 of this Article. The Department of Health and Human Services shall, from State and federal appropriations and from any other funds made available for the Health Insurance Program for Children established under Part 8 of Article 2 of Chapter 108A of the General Statutes, make payments to the North Carolina Teachers' and State Employees' Comprehensive Major Medical Plan as determined by the Plan for its administration, claims processing, and other services authorized to provide coverage for acute medical care for children eligible for benefits provided under Part 5 of this Article."

(f) G.S. 135-39.8 reads as rewritten:

"§ 135-39.8. *Rules and regulations.*

The Executive Administrator and Board of Trustees may issue rules and regulations to implement ~~Parts 2, 3, and 4~~ 2, 3, 4, and 5 of this Article. Rules and regulations of the Board of Trustees shall remain in effect until amended or repealed by the Executive Administrator and Board of Trustees. The Executive Administrator and Board of Trustees shall provide a written description of the rules and regulations issued under this section to all employing units, all health benefit representatives, the oversight team provided for in G.S. 135-39.3, all relevant health care providers affected by a rule or regulation, and to any other parties requesting a written description and approved by the Executive Administrator and Board of Trustees to receive a description on a timely basis."

(g) The title of Chapter 135 of the General Statutes reads as rewritten:

"Retirement System for Teachers and State Employees;
Social Security; Health Insurance Program for Children."

(h) The title of Article 3 of Chapter 135 of the General Statutes reads as rewritten:

"Other Teacher, Employee ~~Benefits.~~ Benefits;
Child Health Benefits."

Section 5. (a) Division II of Article 4 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"§ 105-151.27. *Credit for child health insurance.*

(a) Credit. -- Subject to the limitations provided in this section, a taxpayer is allowed a credit against the tax imposed by this Division if the taxpayer paid a health insurance premium during the taxable year that provided insurance coverage for the taxpayer's dependent children. The amount of the credit is the amount provided in the table below that corresponds to the taxpayer's adjusted gross income, as a percentage of the applicable federal poverty level (FPL), as defined in G.S. 108A-70.18, based on the taxpayer's family size.

<u>AGI as % of FPL</u>	<u>Credit Amount</u>
0 - 225	\$300
Over 225	\$100

(b) Income Limitation. -- To be eligible for the credit allowed under this section, the taxpayer's adjusted gross income (AGI), as calculated under the Code, must be less than the amount listed in the table below:

<u>Filing Status</u>	<u>AGI</u>
Married, filing jointly	\$100,000
Head of Household	80,000
Single	60,000
Married, filing separately	50,000

(c) Credit Limitations. -- The credit allowed by this section may not exceed the amount of health insurance premium the taxpayer paid during the taxable year that provided insurance coverage for the taxpayer's dependent children. A nonresident or part-year resident who claims the credit allowed by this section shall reduce the amount of the credit by multiplying it by the fraction calculated under G.S. 105-134.5(b) or (c), as appropriate. In order to claim a credit under this section, a taxpayer must provide any information required by the Secretary to establish the taxpayer's eligibility for the credit and the amount of the credit.

(d) No Double Benefit. -- If the taxpayer claimed a deduction for health insurance costs of self-employed individuals under section 162(l) of the Code for the taxable year, the amount of credit otherwise allowed the taxpayer under this section is reduced by the applicable percentage provided in section 162(l) of the Code. If the taxpayer claimed a deduction for medical care expenses under section 213 of the Code for the taxable year, the taxpayer is not allowed a credit under this section. A taxpayer who claims the credit allowed by this section must provide any information required by the Secretary to demonstrate that the amount paid for premiums for which the credit is claimed was not excluded from the taxpayer's gross income for the taxable year.

(e) Credit Refundable. -- If the credit allowed by this section exceeds the amount of tax imposed by this Division for the taxable year reduced by the sum of all credits allowable, the Secretary shall refund the excess to the taxpayer. The refundable excess is governed by the provisions governing a refund of an overpayment by the taxpayer of the tax imposed in this Division. In computing the amount of tax against which multiple credits are allowed, nonrefundable credits are subtracted before refundable credits.

(f) Definitions. -- The following definitions apply in this section:

(1) Comprehensive health insurance plan. -- Any of the following plans, policies, or contracts that provide health benefits coverage

for dependent children for inpatient and outpatient hospital services, physicians' surgical and medical services, and laboratory and X-ray services; accident and health insurance policy or certificate; hospital or medical service corporation contract; HMO subscriber contract; plan provided by a MEWA or plan provided by another benefit arrangement, to the extent permitted by ERISA, and the North Carolina Teachers' and State Employees' Comprehensive Major Medical Plan established under Part 3 of Article 3 of Chapter 135 of the General Statutes. 'Comprehensive health insurance plan' does not mean any plan implemented or administered through the Department of Health and Human Services.

- (2) Dependent child. -- A child under the age of 19 for whom the taxpayer is allowed to deduct a personal exemption under section 151(c)(1)(B) of the Code for the taxable year.
- (3) Family size. -- The number of individuals for whom the taxpayer is entitled to deduct a personal exemption under the Code for the taxable year.
- (4) Health insurance premium. -- An amount paid by the taxpayer for insurance coverage of the taxpayer's dependent children under a private or employer-sponsored comprehensive health insurance plan and an amount paid to purchase extended coverage under the Health Insurance Program for Children pursuant to G.S. 108A-70.21. The term does not include, however, amounts deducted from or not included in the taxpayer's gross income for the taxable year, as calculated in subsection (d) of this section."

(b) G.S. 105-160.3(b) is amended by adding a new subdivision to read:

"(4) G.S. 105-151.27. Credit for child health insurance."

(c) The Department of Revenue shall withhold from collections under Division II of Article 4 of Chapter 105 of the General Statutes for the 1999-2000 fiscal year the amount necessary to reimburse it for its additional costs of printing, postage, programming, and administration directly attributable to this act. It is the intent of the General Assembly to appropriate funds to the Department of Revenue for the 1999-2001 fiscal biennium to cover the costs of auditing ten percent (10%) of the tax credits claimed under this section. These costs include salary, benefits, and work space for 10 auditors and two clerical support positions. It is also the intent of the General Assembly to appropriate funds to the Department of Revenue for the 1999-2000 fiscal year for the one-time programming costs required for the credit authorized by this section.

(d) This section is effective for taxable years beginning on or after January 1, 1999, and expires on the effective date of an act repealing the Health Insurance Program for Children established under this act.

(e) This section becomes effective only if the United States Secretary of Health and Human Services approves the State Plan to implement the Health Insurance Program for Children established under this act.

Section 6. G.S. 143-626(2) reads as rewritten:

"(2) Accept applications by carriers to qualify as Accountable Health Carriers, determine the eligibility of carriers to become

Accountable Health Carriers according to criteria described in G.S. 143-629, designate carriers as Accountable Health Carriers, and approve one additional qualified health care plan to be offered to small employers beyond the basic and standard health care plans. plans, and approve programs that provide options for the purchase of private insurance for dependent coverage that meets the requirements of the Health Insurance Program for Children established under Part 8 of Article 2 of Chapter 108A of the General Statutes and Title XXI of the Social Security Act. The Board shall report programs approved to the Joint Legislative Health Care Oversight Committee established under G.S. 120-70.110."

Section 7. In order to ensure that health insurance coverage provided to children from public funds is not duplicative of coverage provided to the same children pursuant to court orders for medical support or health insurance, the Department of Health and Human Services shall develop a plan for collecting and retrieving data to enable the Department to readily identify children covered by support orders and also covered under private health insurance, or eligible for coverage under the State Medicaid Program or the Health Insurance Program for Children established in this act. No later than October 1, 1998, the Department shall report on the development of this plan to the Joint Legislative Health Care Oversight Committee.

Section 8. Except for immunization, no State funds, federal funds, or funds from any other source may be used under the Health Insurance Program for Children established under this act to reimburse medical services performed in school-based health clinic settings. The Executive Administrator and Board of Trustees of the Teachers' and State Employees' Comprehensive Major Medical Plan shall conduct a survey of any claims paid by the Plan's self-insured indemnity program during each of the last three plan years. Any results of the survey shall be used by the Plan in conducting a study of the array of medical services delivered in school-based settings and whether or not such services should be eliminated, curtailed, or expanded. No later than March 31, 1999, the Plan shall make its findings and recommendations pursuant to this study known to the Committee on Employee Hospital and Medical Benefits, the Joint Legislative Health Care Oversight Committee, and the 1999 Session of the General Assembly.

Section 9. Not later than September 1, 1998, the Department of Health and Human Services shall select a name for the Health Insurance Program for Children established under this act. The Department shall establish procedures for public input into the selection of the name of the Program. Prior to final selection of the Program name by the Department, the Department shall report to the Joint Legislative Health Care Oversight Committee the results of the public input solicited by the Department and the name selected by the Department.

Section 10. (a) There is appropriated from the General Fund to the Department of Health and Human Services the sum of fifteen million six hundred seventeen thousand eight hundred twenty-two dollars (\$15,617,822) for the 1998-99 fiscal year to be used for the Health Insurance Program for Children established under this act and under Title XXI of the Social

Security Act, as added by Pub. L. 105-33, 111 Stat. 552. The Office of State Budget and Management shall include in the proposed continuation budget the amount of State funds necessary for Program implementation for the budgeted fiscal year but not more than the amount necessary to draw down the maximum amount of federal funds available to the State for the budgeted fiscal year for the Health Insurance Program for Children under Title XXI of the Social Security Act, as added by Pub. L. 105-33, 111 Stat. 552.

(b) Of the funds appropriated under subsection (a) of this section, the Department of Health and Human Services may use up to two million dollars (\$2,000,000) for the 1998-99 fiscal year to cover unmatched start-up costs for the Health Insurance Program for Children established under this act.

(c) No State funds appropriated under this act may be expended for any purpose other than as provided under this act for the implementation of the Health Insurance Program for Children established under this act and approved by the United States Secretary of Health and Human Services under Title XXI of the Social Security Act, as added by Pub. L. 105-33, 111 Stat. 552.

(d) Funds appropriated under this section and not expended or obligated in the 1998-99 fiscal year shall revert to the General Fund on June 30, 1999.

Section 11. Section 10 of this act becomes effective July 1, 1998. Health insurance coverage provided to children under the Health Insurance Program for Children established under this act shall become effective no earlier than October 1, 1998. The remainder of this act is effective when it becomes law. Since the Health Insurance Program for Children established in this act is dependent upon federal funds, it is the intent of the General Assembly that the Health Insurance Program for Children will continue and benefits will be paid for so long as federal funds are available and State funds are specifically appropriated for this purpose.

In the General Assembly read three times and ratified this the 30th day of April, 1998.

Became law upon approval of the Governor at 9:22 a.m. on the 7th day of May, 1998.



SESSION LAWS
OF THE
STATE OF NORTH CAROLINA

REGULAR SESSION 1998

H.B. 1394

SESSION LAW 1998-2

AN ACT TO DIVIDE NORTH CAROLINA INTO TWELVE
CONGRESSIONAL DISTRICTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 163-201(a) reads as rewritten:

"(a) For the purpose of nominating and electing members of the House of Representatives of the Congress of the United States in 1998 and every two years thereafter, the State of North Carolina shall be divided into 12 districts as follows:

District 1: Beaufort County: Chocowinity township, Richland township, Washington township: the remainder not in District 3; Bertie County, Craven County: Epworth *, Cove City *, Dover *, Fort Barnwell *, First Ward *, Second Ward *, Third Ward *, Fourth Ward *, Fifth Ward *, Clarks *, Country Club *, Rhems *: the remainder not in District 3; Jasper *, Edgecombe County, Gates County, Granville County: Antioch *, Corinth *, Oak Hill *, Credle *, East Oxford *, South Oxford *, West Oxford Elementary *, Salem *, Sassafras Fork *, Walnut Grove *; Greene County, Halifax County, Hertford County, Jones County: Beaver Creek *, Chinquapin *, Cypress Creek *, Pollocksville *, Trenton *, White Oak *; Lenoir County: Contentnea *, Institute *, Kinston #1 *, Kinston #2 *, Kinston #6 *, Kinston #7 *, Kinston #8 *, Kinston #9 *, Moseley Hall *, Sandhill *, Vance *; Martin County, Northampton County, Person County: Allensville, Cunningham-Chub Lake, Holloway, Roxboro City # 4, Woodsdale, Roxboro City # 1, Roxboro City # 1A, Roxboro City # 2, Roxboro City # 3; Pitt County: Ayden East *, Belvoir *, Bethel *, Carolina *, Falkland *, Fountain *, Grifton *, Grimesland *, Pactolus *, Greenville #1 *, Greenville #2, Greenville #3 *, Greenville #4 *, Greenville #5 *, Greenville #6 *, Greenville #13 *, Greenville #2 Noncontiguous; Vance County, Warren County, Washington County: Lees Mill *, Plymouth #1 *, Plymouth #2 *, Plymouth #3 *; Wayne County: Goldsboro #1 *, Goldsboro #2 *, Goldsboro #3 *, Goldsboro #5 *, Eureka *, Fremont *, Saulston *, Pinewood *; Wilson County: Black Creek *, Gardners *, Saratoga *,

Stantonsburg *, Toisnot *, Wilson A *, Wilson B *, Wilson C *, Wilson E *, Wilson F *, Wilson G *, Wilson H *, Wilson I *, Wilson M *, Wilson N *, Wilson Q *.

District 2: Franklin County, Granville County: Brassfield *, Butner *, Creedmoor *, Tally Ho *; Harnett County, Johnston County, Lee County, Nash County, Sampson County: Kitty Fork *, Keener *, Herring *, Newton Grove *, Northeast Clinton *, Central Clinton *, East Clinton *, West Clinton *, Giddensville *, Turkey *, Westbrook *; Wake County: Raleigh 01-01 *, Raleigh 01-02 *, Raleigh 01-03 *, Raleigh 01-05 *, Raleigh 01-06 *, Raleigh 01-07 *, Raleigh 01-09 *, Raleigh 01-10 *, Raleigh 01-12 *, Raleigh 01-13 *, Raleigh 01-14 *, Raleigh 01-18 *, Raleigh 01-19 *, Raleigh 01-20 *, Raleigh 01-21 *, Raleigh 01-22 *, Raleigh 01-23 *, Raleigh 01-26 *, Raleigh 01-27 *, Raleigh 01-28 *, Raleigh 01-31 *, Raleigh 01-34 *, Raleigh 01-35 *, Raleigh 01-38 *, Raleigh 01-40 *, Raleigh 01-46 *, Bartons Creek #2 *, Little River #1 *, Little River #2 *, Marks Creek #1 *, Marks Creek #2 *, Raleigh 01-27 Part, Neuse #1 *, Neuse #2 *, New Light #1 *, New Light #2 *, St. Marys #1 *, St. Marys #2 *, St. Matthews #1 *, St. Matthews #2 *, St. Matthews #3 *, St. Matthews #4 *, Wake Forest #1 *, Wake Forest #2 *; Wilson County: Cross Roads *, Old Fields *, Spring Hill *, Taylors *, Wilson D *, Wilson J *, Wilson K *, Wilson L *, Wilson P *.

District 3: Beaufort County: Bath township, Long Acre township, Pantego township, Washington township: Tract 9905: Block Group 5: Block 522A, Block 528A; Camden County, Carteret County: Carteret County; Chowan County, Craven County: Ernul *, Vanceboro *, Bridgeton *, Truitt *, Harlowe *, Croatan *, Havelock *, Grantham *, Sixth Ward *, Rhems *: Tract 9604: Block Group 7: Block 701, Block 702, Block 704; River Bend *, Trent Woods *, Woodrow *; Currituck County; Dare County; Hyde County; Jones County: Tuckahoe *; Lenoir County: Falling Creek *, Kinston #3 *, Kinston #4 *, Kinston #5 *, Neuse *, Pink Hill #1 *, Pink Hill #2 *, Southwest *, Trent #1 *, Trent #2 *, Woodlinton *; Onslow County, Pamlico County; Pasquotank County, Perquimans County, Pitt County: Arthur *, Ayden West *, Chicod *, Farmville West *, Farmville East *, Simpson *, Swift Creek *, Winterville West *, Winterville East *, Greenville #7 *, Greenville #8 *, Greenville #9 *, Greenville #10 *, Greenville #11 *, Greenville #12 *; Tyrrell County, Washington County: Scuppernong *, Skinnersville *; Wayne County: Brogden *, Mt. Olive *, Buck Swamp *, Fork *, Grantham *, Great Swamp *, Goldsboro #4 *, Indian Springs *, White Hall *, New Hope *, Pikeville *, Stoney Creek *.

District 4: Chatham County: Albright *, Bynum *, East Mann's Chapel *, West Mann's Chapel *, Bennett *, Bonlee *, Harpers Crossroads *, Cape Fear *, East Pittsboro *, West Pittsboro *, Goldston *, Hadley *, Haw River *, Hickory Mountain *, New Hope *, Oakland *, East Williams *, West Williams *; Durham County, Orange County, Person County: Bushy Fork, Flat River, Mt. Tirzah, Olive Hill, Hurdle Mills; Wake County: Raleigh 01-04 *, Raleigh 01-11 *, Raleigh 01-15 *, Raleigh 01-16 *, Raleigh 01-17 *, Raleigh 01-29 *, Raleigh 01-30 *, Raleigh 01-32 *, Raleigh 01-33 *, Raleigh 01-36 *, Raleigh 01-37 *, Raleigh 01-39 *, Raleigh 01-41 *, Raleigh 01-42 *, Raleigh 01-43 *, Raleigh 01-44 *,

Raleigh 01-45 *, Bartons Creek #1 *, Buckhorn *, Cary #1 *, Cary #2 *, Cary #3 *, Cary #4 *, Cary #5 *, Cary #6 *, Cary #7 *, Cary #8 *, Cary #9 *, Cary #10 *, Cedar Fork *, Holly Springs *, House Creek #1 *, House Creek #2 *, House Creek #3 *, House Creek #4 *, House Creek #5 *, House Creek #6 *, Leesville #1 *, Leesville #2 *, Leesville #3 *, Meredith *, Middle Creek #1 *, Middle Creek #2 *, Panther Branch *, St. Marys #3 *, St. Marys #4 *, St. Marys #5 *, St. Marys #6 *, St. Marys #7, Swift Creek #1 *, Swift Creek #2 *, Swift Creek #3 *, Swift Creek #4 *, White Oak #1 *, White Oak #2 *.

~~District 5: Alamance County; Central Boone *, North Boone *, South Boone *, West Boone *, Boone #5 *, East Burlington *, North Burlington *, South Burlington *, West Burlington *, Burlington #5 *, Burlington #6 *, Burlington #7 *, Burlington #8 *, Faucette *, East Graham *, North Graham *, West Graham *, Graham #3 *, Haw River *, North Melville *, South Melville *, Morton *, Pleasant Grove *; Alleghany County; Ashe County; Caswell County; Davie County; Forsyth County; Abbotts Creek #1 *, Abbotts Creek #2 *, Abbotts Creek #3 *, Belews Creek *, Bethania #1 *, Bethania #2 *, Bethania #3 *, Broadbay #1 *, Clemmonsville #1 *, Clemmonsville #2 *, Clemmonsville #3 *, Kernersville #1 *, Kernersville #2 *, Kernersville #3 *, Kernersville #4 *, Lewisville #1 *, Lewisville #2 *, Lewisville #3 *, Middlefork #2 *, Middlefork #3 *, Old Richmond *, Old Town #2 *, Old Town #3 *, Salem Chapel #1 *, Salem Chapel #2 *, South Fork #2 *, South Fork #3 *, Vienna #1 *, Vienna #2 *, Vienna #3 *, Ardmore Baptist Church *, Bethabara Moravian Church *, Bible Wesleyan Church *, Bishop McGuinness *, Bolton Swimming Center *, Brown/Douglas Recreation *, Brunson Elementary School *, Calvary Baptist Church *, Christ Moravian Church *, Country Club Fire St. *, Covenant Presbyterian Church *, First Christian Church *, Forsyth Tech W. Camp. *, Greek Orthodox Church *, Hanes Community Center *, Jefferson Elementary School *, Latham Elementary School *, Messiah Moravian Church *, Miller Park Recreation Center *, Mt. Tabor High School *, New Hope United Methodist Church *, Old Town Presbyterian Church *, Parkland High School *, Parkway United Church *, Philo Middle School *, Polo Park Recreation Center *, Reynolds High School Gym *, Sherwood Forest Elementary School *, South Fork Elem School *, St. Anne's Episcopal Church *, Summit School *, Trinity United Methodist Church *, Whitaker Elementary School *; Rockingham County, Stokes County; Surry County.~~

District 5: Alamance County, Caswell County, Davie County: Davie County; Forsyth County: Abbotts Creek #1 *, Abbotts Creek #2 *, Abbotts Creek #3 *, Belews Creek *, Bethania #1 *, Bethania #2 *, Bethania #3 *, Clemmonsville #1 *, Clemmonsville #2 *, Clemmonsville #3 *, Kernersville #1 *, Kernersville #2 *, Kernersville #3 *, Kernersville #4 *, Lewisville #1 *, Lewisville #2 *, Lewisville #3 *, Old Richmond *, Old Town #2 *, Old Town #3 *, Salem Chapel #1 *, Salem Chapel #2 *, South Fork #2 *, South Fork #3 *, Vienna #1 *, Vienna #2 *, Vienna #3 *, Ardmore Baptist Church *, Bethabara Moravian Church *, Bible Wesleyan Church *, Bishop McGuinness *, Bolton Swimming Center *, Brown/Douglas Recreation *, Brunson Elementary School *, Calvary Baptist Church *,

Christ Moravian Church *, Country Club Fire St. *, First Christian Church *, Forsyth Tech W. Camp. *, Greek Orthodox Church *, Hanes Community Center *, Jefferson Elementary School *, Latham Elementary School *, Messiah Moravian Church *, Miller Park Recreation Center *, Mt. Tabor High School *, New Hope United Methodist Church *, Old Town Presbyterian Church *, Parkland High School *, Parkway United Church *, Polo Park Recreation Center *, Reynolds High School Gym *, Sherwood Forest Elementary School *, South Fork Elem School *, St. Anne's Episcopal Church *, Summit School *, Trinity United Methodist Church *, Whitaker Elementary School *; Guilford County: Bruce *, North Center Grove *, South Center Grove *, North Madison *, South Madison *, North Monroe *, South Monroe *, Oak Ridge *, Stokesdale *, North Washington *, South Washington *; Rockingham County, Stokes County: Stokes County; Surry County: Dobson 1 *, Dobson 2 *, Dobson 3 *, Eldora *, Franklin *, Long Hill *, Mount Airy 1 *, Mount Airy 2 *, Mount Airy 4 *, Mount Airy 5 *, Mount Airy 6 *, Mount Airy 7 *, Mount Airy 8 *, Mount Airy 9 *, Pilot 1 *, Pilot 2 *, Rockford *, Shoals *, Siloam *, Stewarts Creek 1 *, Stewarts Creek 2 *, North Westfield *, South Westfield *.

District 6: Alamance County: Albright *, Burlington #9 *, Coble *, South Graham *, Melville #3 *, North Newlin *, South Newlin *, Patterson *, North Thompson *, South Thompson *; Chatham County: North Siler City *, South Siler City *; Davidson County: Alleghany *, Central *, Holly Grove *, Liberty *, Cotton *, Southmont *, Denton *, Emmons *, Silver Valley *, Healing Springs *, Jackson Hill *, Lexington No. 1 *, Lexington No. 2 *, Ward No. 6 *, Welcome *, Silver Hill *, Thomasville No. 4 *, Thomasville No. 5 *, Thomasville No. 7 *, Thomasville No. 9 *, Thomasville No. 10 *; Guilford County: GB-10 *, GB-11 *, GB-12 *, GB-13 *, GB-14 *, GB-16 *, GB-17 *, GB-20 *, GB-21 *, GB-22 *, GB-23 *, GB-27A *, GB-28 *, GB-31 *, GB-32 *, GB-34A *, GB-35A *, GB-37A *, GB-38 *, GB-39 *, GB-40A *, GB-41A *, GB-43 *, HP-04 *, HP-08 *, HP-09 *, HP-14 *, HP-16 *, HP-17 *, HP-18 *, HP-20 *, HP-21 *, HP-23 *, HP-24 *, Bruce *, North Center Grove *, South Center Grove *, Clay *, Deep River *, Fentress-1 *, Fentress-2 *, Friendship-1 *, Friendship-2 *, Gibsonville *, Whitsett *, Greene *, Jamestown-3 *, North Jefferson *, South Jefferson *, North Madison *, South Madison *, North Monroe *, South Monroe *, Oak Ridge *, Stokesdale *, South Sumner *, North Washington *, South Washington *, GB-27B *, GB-34B *, GB-35B *, GB-37B *, GB-40B *, GB-41B *, GIB-G *, GB-24C *, GB-27C *, GB-35C *; Moore County: Moore County; Randolph County, Rowan County: Bradshaw *, Enochville *, Blackwelder Park *, Bostian School *, N. China Grove *, S. China Grove *, East Kannapolis *, West Kannapolis *, East Landis *, West Landis *, Barnhardt Mill *, Rockwell *, Bostian Crossroads *, Faith, Faith Noncontiguous, Locke *, Sumner *, Morgan I *, Morgan II *, Mt. Ulla *, Gold Knob *, Granite Quarry *, Hatters Shop *, Milford Hills *, Trading Ford, West Ward II *, Trading Ford Noncontiguous A, Steele *.

District 6: Chatham County: North Siler City *, South Siler City *; Davidson County: Abbotts Creek *, Alleghany *, Central *, Holly Grove *,

Liberty *, Denton *, Emmons *, Silver Valley *, Healing Springs *, Jackson Hill *, Silver Hill *, Thomasville No. 1 *, Thomasville No. 2 *, Thomasville No. 3 *, Thomasville No. 4 *, Thomasville No. 5 *, Thomasville No. 7 *, Thomasville No. 8 *, Thomasville No. 9 *, Thomasville No. 10 *; Guilford County: GB-01 *, GB-02 *, GB-03 *, GB-04 *, GB-05 *, GB-06 *, GB-07 *, GB-08 *, GB-09 *, GB-10 *, GB-11 *, GB-12 *, GB-13 *, GB-14 *, GB-15 *, GB-16 *, GB-17 *, GB-18 *, GB-19 *, GB-20 *, GB-21 *, GB-22 *, GB-23 *, GB-24A *, GB-25 *, GB-26A *, GB-27A *, GB-28 *, GB-29 *, GB-30 *, GB-31 *, GB-32 *, GB-33 *, GB-34A *, GB-35A *, GB-36 *, GB-37A *, GB-38 *, GB-39 *, GB-40A *, GB-41A *, GB-42 *, GB-43 *, GB-44 *, GB-45 *, HP-01 *, HP-02 *, HP-03 *, HP-04 *, HP-05 *, HP-06 *, HP-07 *, HP-08 *, HP-09 *, HP-10 *, HP-11 *, HP-12 *, HP-13 *, HP-14 *, HP-15 *, HP-16 *, HP-17 *, HP-18 *, HP-19 *, HP-20 *, HP-21 *, HP-22 *, HP-23 *, HP-24 *, Clay *, Deep River *, Fentress-1 *, Fentress-2 *, Friendship-1 *, Friendship-2 *, Gibsonville *, Whitsett *, Greene *, Jamestown-1 *, Jamestown-2 *, Jamestown-3 *, North Jefferson *, South Jefferson *, North Sumner *, South Sumner *, GB-24B *, GB-26B *, GB-27B *, GB-34B *, GB-35B *, GB-37B *, GB-40B *, GB-41B *, GIB-G *, GB-24C *, GB-27C *, GB-35C *; Moore County; Randolph County.

District 7: Bladen County; Brunswick County; Columbus County; Cumberland County: Beaver Dam *, Black River *, Linden *, Long Hill *, Cedar Creek *, Judson *, Stedman *, Cross Creek #1 *, Cross Creek #3 *, Cross Creek #4 *, Cross Creek #7 *, Cross Creek #8 *, Cross Creek #10 *, Cross Creek #11 *, Cross Creek #12 *, Cross Creek #14 *, Cross Creek #15 *, Cross Creek #18 *, Cross Creek #20 *, Cross Creek #22 *, Cross Creek #23 *, Cross Creek #24 *, Cross Creek #2 *, Eastover *, Vander *, Wade *, Alderman *, Sherwood *, Pearces Mill #2 *, Pearces Mill #3 *, Pearces Mill #4 *, Cumberland #1 *, Cumberland #2 *, Hope Mills #1 *, Hope Mills #2 *, Montclair *, Seventy First #2 *, Seventy First #3 *; Duplin County, New Hanover County, Pender County, Robeson County: Alfordsville *, Back Swamp *, Britts *, Burnt Swamp *, Fairmont #1 *, Fairmont #2 *, Gaddys *, East Howellsville *, West Howellsville *, Lumberton #1 *, Lumberton #2 *, Lumberton #3 *, Lumberton #4 *, Lumberton #5 *, Lumberton #6 *, Lumberton #7 *, Lumberton #8 *, Orrum *, North Pembroke *, South Pembroke *, Philadelphus *, Raft Swamp *, Rowland *, Saddletree *, Smiths *, Smyrna *, Sterlings *, Thompson *, Union *, Whitehouse *, Wishart *; Sampson County: Clement *, Harrells *, Salemburg *, Ingold *, Autryville *, Roseboro *, Mingo *, Plainview *, Southwest Clinton *, Rowan *, Garland *, Lakewood *.

District 8: Anson County, Cabarrus County, Cumberland County: Westarea *, Cross Creek #5 *, Cross Creek #6 *, Cross Creek #9 *, Cross Creek #13 *, Cross Creek #16 *, Cross Creek #17 *, Cross Creek #19 *, Cross Creek #21, Manchester *, Spring Lake *, Beaver Lake *, Brentwood *, Cottonade *, Morganton Road #1 *, Morganton Road #2 *, Seventy First #1 *; Hoke County, Montgomery County; Richmond County, Robeson County: Lumber Bridge *, Maxton *, Parkton *, Red Springs #1 *, Red

Springs #2 *, Rennert *, Shannon *, North St. Pauls *, South St. Pauls *;
Scotland County, Stanly County; Union County.

~~District 9: Cleveland County, Gaston County, Mecklenburg County;
Charlotte Pct. 1 *, Charlotte Pct. 4, Charlotte Pct. 5 *, Charlotte Pct. 6 *,
Charlotte Pct. 7 *, Charlotte Pct. 8 *, Charlotte Pct. 10 *, Charlotte Pct. 18
*, Charlotte Pct. 19 *, Charlotte Pct. 20 *, Charlotte Pct. 21 *, Charlotte
Pct. 32 *, Charlotte Pct. 33 *, Charlotte Pct. 34 *, Charlotte Pct. 35 *,
Charlotte Pct. 36 *, Charlotte Pct. 37 *, Charlotte Pct. 38 *, Charlotte Pct.
45 *, Charlotte Pct. 47 *, Charlotte Pct. 48 *, Charlotte Pct. 49 *,
Charlotte Pct. 50 *, Charlotte Pct. 51 *, Charlotte Pct. 57 *, Charlotte Pct.
58 *, Charlotte Pct. 59 *, Charlotte Pct. 62 *, Charlotte Pct. 63 *,
Charlotte Pct. 64 *, Charlotte Pct. 65 *, Charlotte Pct. 66 *, Charlotte Pct.
67 *, Charlotte Pct. 68 *, Charlotte Pct. 69 *, Charlotte Pct. 70 *,
Charlotte Pct. 71 *, Charlotte Pct. 72 *, Charlotte Pct. 73 *, Charlotte Pct.
74 *, Charlotte Pct. 75 *, Charlotte Pct. 76 *, Charlotte Pct. 77 *: Tract
0058.06: Block Group 1: Block 113; Tract 0059.03: Block Group 3: Block
340A, Block 340B, Block 341A, Block 341B, Block 342, Block 344A,
Block 344B, Block 345, Block 346, Block 347, Block 348, Block 349,
Block 350, Block 351, Block 352, Block 353, Block 354, Block 355, Block
356, Block 357, Block 361; Charlotte Pct. 79 *, Charlotte Pct. 80 *,
Charlotte Pct. 83 *, Charlotte Pct. 84 *, Charlotte Pct. 85 *, Charlotte Pct.
86 *, Charlotte Pct. 87 *, Charlotte Pct. 88 *, Charlotte Pct. 89 *,
Charlotte Pct. 90 *, Charlotte Pct. 91, Charlotte Pct. 92 *, Charlotte Pct. 93
*, Charlotte Pct. 94 *, Charlotte Pct. 95 *, Charlotte Pct. 96 *, BER *,
CCK *, CO1 *, LEM *, LC1 -- North, MA1 *, MA2 *, MA3 *, MA4 *,
Charlotte Pct. 102, MH1 *, MH2 *, MH3 *, OAK, PC1 *, PC2 *, PVL *,
PR1, PR2, PR3, Charlotte Pct. 93 Part, SC1, SC2, Charlotte Pct. 100 *.~~

District 9: Cleveland County, Gaston County, Lincoln County,
Mecklenburg County: Charlotte Pct. 1 *, Charlotte Pct. 4, Charlotte Pct. 8
*, Charlotte Pct. 18 *, Charlotte Pct. 19 *, Charlotte Pct. 20 *, Charlotte
Pct. 32 *, Charlotte Pct. 36 *, Charlotte Pct. 47 *, Charlotte Pct. 48 *,
Charlotte Pct. 49 *, Charlotte Pct. 50 *, Charlotte Pct. 57 *, Charlotte Pct.
58 *, Charlotte Pct. 59 *, Charlotte Pct. 62 *, Charlotte Pct. 64 *,
Charlotte Pct. 65 *, Charlotte Pct. 66 *, Charlotte Pct. 67 *, Charlotte Pct.
68 *, Charlotte Pct. 69 *, Charlotte Pct. 70 *, Charlotte Pct. 71 *,
Charlotte Pct. 72 *, Charlotte Pct. 73 *, Charlotte Pct. 74 *, Charlotte Pct.
75 *, Charlotte Pct. 76 *, Charlotte Pct. 77 *: Tract 0058.06: Block Group
1: Block 113; Tract 0059.03: Block Group 3: Block 340A, Block 340B,
Block 341A, Block 341B, Block 342, Block 344A, Block 344B, Block 345,
Block 346, Block 347, Block 348, Block 349, Block 350, Block 351, Block
352, Block 353, Block 354, Block 355, Block 356, Block 357, Block 361;
Charlotte Pct. 79 *, Charlotte Pct. 80 *, Charlotte Pct. 83 *, Charlotte Pct.
85 *, Charlotte Pct. 86 *, Charlotte Pct. 87 *, Charlotte Pct. 88 *,
Charlotte Pct. 89 *, Charlotte Pct. 90 *, Charlotte Pct. 91, Charlotte Pct. 92
*, Charlotte Pct. 93 *, Charlotte Pct. 94 *, Charlotte Pct. 95 *, Charlotte
Pct. 96 *, BER *, CCK *, CO1 *, LEM *, LC1 - North, MA1 *, MA2 *,
MA3 *, MA4 *, Charlotte Pct. 102, MH1 *, MH2 *, MH3 *, OAK, PC1
*, PC2 *, PVL *, PR1, PR2, PR3, Charlotte Pct. 93 Part, SC1, SC2,
Charlotte Pct. 100 *.

~~District 10: Alexander County; Avery County; Burke County; Caldwell County; Catawba County; Iredell County; Bethany *, Concord *, Davidson *, Eagle Mills *, Fallstown *, New Hope *, Olin *, Sharpesburg *, Shiloh *, Statesville #1 *, Statesville #2 *, Statesville #4 *, Statesville #5 *, Turnersburg *, Union Grove *; Lincoln County; Mitchell County; Watauga County; Wilkes County; Yadkin County.~~

~~District 10: Alexander County; Alleghany County; Ashe County; Avery County; Burke County; Caldwell County; Catawba County; Iredell County; Bethany *, Concord *, Davidson *, Eagle Mills *, Fallstown *, New Hope *, Olin *, Sharpesburg *, Shiloh *, Statesville #1 *, Statesville #2 *, Statesville #3 *, Statesville #4 *, Statesville #5 *, Statesville #6 *, Turnersburg *, Union Grove *; Mitchell County; Surry County; Bryan *, Elkin 1 *, Elkin 2 *, Elkin 3 *, Marsh *; Watauga County; Wilkes County; Yadkin County.~~

~~District 11: Buncombe County; Cherokee County; Clay County; Graham County; Haywood County; Henderson County; Jackson County; McDowell County; Macon County; Madison County; Polk County; Rutherford County; Swain County; Transylvania County; Yancey County.~~

~~District 12: Davidson County: Abbotts Creek *, Arcadia *, Boone *, Hampton *, Lexington No. 3 *, Lexington No. 4 *, Ward No. 1 *, Ward No. 2 *, Ward No. 3 *, Ward No. 4 *, Ward No. 5 *, Midway *, Reeds *, Tyro *, Reedy Creek *, Thomasville No. 1 *, Thomasville No. 2 *, Thomasville No. 3 *, Thomasville No. 8 *, Yadkin College *; Forsyth County: Broadbay #2 *, Ashley Middle School *, Carver High School *, East Winston Library *, Easton Elementary School *, Forest Hill Fire Station *, Forest Pk. Elementary School *, 14th Street Recreation Center *, Happy Hill Recreation Center *, Hill Middle School *, Kennedy Middle School *, Lowrance Middle School *, M. L. King Recreation Center *, Memorial Coliseum *, Mineral Springs F. St *, Mt. Sinai Church *, St. Andrews United Methodist *, Trinity Moravian Church *, Winston Lake Family YMCA *; Guilford County: GB-01 *, GB-02 *, GB-03 *, GB-04 *, GB-05 *, GB-06 *, GB-07 *, GB-08 *, GB-09 *, GB-15 *, GB-18 *, GB-19 *, GB-24A *, GB-25 *, GB-26A *, GB-29 *, GB-30 *, GB-33 *, GB-36 *, GB-42 *, GB-44 *, GB-45 *, GB-01 *, HP-02 *, HP-03 *, HP-05 *, HP-06 *, HP-07 *, HP-10 *, HP-11 *, HP-12 *, HP-13 *, HP-15 *, HP-19 *, HP-22 *, Jamestown-1 *, Jamestown-2 *, North Sumner *, GB-24B *, GB-26B *; Iredell County: Barringer *, Chambersburg *, Coddle Creek #1 *, Coddle Creek #2 *, Coddle Creek #3 *, Coddle Creek #4 *, Cool Springs *, Statesville #3 *, Statesville #6 *; Mecklenburg County: Charlotte Pct. 2 *, Charlotte Pct. 3, Charlotte Pct. 9 *, Charlotte Pct. 11 *, Charlotte Pct. 12 *, Charlotte Pct. 13 *, Charlotte Pct. 14 *, Charlotte Pct. 15 *, Charlotte Pct. 16 *, Charlotte Pct. 17 *, Charlotte Pct. 22 *, Charlotte Pct. 23 *, Charlotte Pct. 24 *, Charlotte Pct. 25 *, Charlotte Pct. 26 *, Charlotte Pct. 27 *, Charlotte Pct. 28 *, Charlotte Pct. 29 *, Charlotte Pct. 30 *, Charlotte Pct. 31 *, Charlotte Pct. 39 *, Charlotte Pct. 40 *, Charlotte Pct. 41 *, Charlotte Pct. 42 *, Charlotte Pct. 43 *, Charlotte Pct. 44 *, Charlotte Pct. 46 *, Charlotte Pct. 52 *, Charlotte Pct. 53 *, Charlotte Pct. 54 *, Charlotte Pct. 55 *, Charlotte Pct. 56 *, Charlotte Pct. 60, Charlotte Pct. 61 *, Charlotte Pct. 77~~

~~*: the remainder not in District 9; Charlotte Pct. 78 *, Charlotte Pct. 81 *, Charlotte Pct. 82 *, Charlotte Pct. 97 *, Charlotte Pct. 98 *, COR *, CO2 *, DAV *, HUN *, LC2, LC1 -- South, MC1, MC2, Charlotte Pct. 16 Part, MC1 part, XMC2 Noncontiguous, Charlotte Pct. 104, Charlotte Pct. 105; Rowan County: Cleveland *, Franklin *, East Spencer *, Spencer *, West Innes *, East Ward I *, East Ward II *, North Ward I *, North Ward II *, South Ward *, West Ward I *, West Ward III *, Scotch Irish *, Unity *.~~

District 12: Davidson County: Arcadia *, Boone *, Cotton *, Southmont *, Hampton *, Lexington No. 1 *, Lexington No. 2 *, Lexington No. 3 *, Lexington No. 4 *, Ward No. 1 *, Ward No. 2 *, Ward No. 3 *, Ward No. 4 *, Ward No. 5 *, Ward No. 6 *, Welcome *, Midway *, Reeds *, Tyro *, Reedy Creek *, Yadkin College *; Forsyth County: Broadbay #1 *, Broadbay #2 *, Middlefork #2 *, Middlefork #3 *, Ashley Middle School *, Carver High School *, Covenant Presbyterian Church *, East Winston Library *, Easton Elementary School *, Forest Hill Fire Station *, Forest Pk. Elementary School *, 14th Street Recreation Center *, Happy Hill Recreation Center *, Hill Middle School *, Kennedy Middle School *, Lowrance Middle School *, M. L. King Recreation Center *, Memorial Coliseum *, Mineral Springs F. St *, Mt. Sinai Church *, Philo Middle School *, St. Andrews United Methodist *, Trinity Moravian Church *, Winston Lake Family YMCA *; Iredell County: Barringer *, Chambersburg *, Coddle Creek #1 *, Coddle Creek #2 *, Coddle Creek #3 *, Coddle Creek #4 *, Cool Springs *; Mecklenburg County: Charlotte Pct. 2 *, Charlotte Pct. 3, Charlotte Pct. 5 *, Charlotte Pct. 6 *, Charlotte Pct. 7 *, Charlotte Pct. 9 *, Charlotte Pct. 10 *, Charlotte Pct. 11 *, Charlotte Pct. 12 *, Charlotte Pct. 13 *, Charlotte Pct. 14 *, Charlotte Pct. 15 *, Charlotte Pct. 16 *, Charlotte Pct. 17 *, Charlotte Pct. 21 *, Charlotte Pct. 22 *, Charlotte Pct. 23 *, Charlotte Pct. 24 *, Charlotte Pct. 25 *, Charlotte Pct. 26 *, Charlotte Pct. 27 *, Charlotte Pct. 28 *, Charlotte Pct. 29 *, Charlotte Pct. 30 *, Charlotte Pct. 31 *, Charlotte Pct. 33 *, Charlotte Pct. 34 *, Charlotte Pct. 35 *, Charlotte Pct. 37 *, Charlotte Pct. 38 *, Charlotte Pct. 39 *, Charlotte Pct. 40 *, Charlotte Pct. 41 *, Charlotte Pct. 42 *, Charlotte Pct. 43 *, Charlotte Pct. 44 *, Charlotte Pct. 45 *, Charlotte Pct. 46 *, Charlotte Pct. 51 *, Charlotte Pct. 52 *, Charlotte Pct. 53 *, Charlotte Pct. 54 *, Charlotte Pct. 55 *, Charlotte Pct. 56 *, Charlotte Pct. 60, Charlotte Pct. 61 *, Charlotte Pct. 63 *, Charlotte Pct. 77 *: Tract 0038.04: Block Group 2; Tract 0058.06: Block Group 1: Block 101, Block 102, Block 103, Block 104, Block 105, Block 106A, Block 107, Block 108A, Block 109, Block 110, Block 111A, Block 124A, Block 125, Block 126, Block 127, Block 128A, Block 128B, Block 129, Block 130; Tract 0059.03: Block Group 3: Block 301, Block 302, Block 303, Block 304, Block 343, Block 386, Block 387; Charlotte Pct. 78 *, Charlotte Pct. 81 *, Charlotte Pct. 82 *, Charlotte Pct. 84 *, Charlotte Pct. 97 *, Charlotte Pct. 98 *, COR *, CO2 *, DAV *, HUN *, LC2, LC1 - South, MC1, MC2, Charlotte Pct. 16 Part, MC1 part, XMC2 Noncontiguous, Charlotte Pct. 104, Charlotte Pct. 105; Rowan County."

Section 1.1. The plan adopted by this act is effective for the elections for the years 1998 and 2000 unless the United States Supreme Court

reverses the decision holding unconstitutional G.S. 163-201(a) as it existed prior to the enactment of this act.

Section 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 21st day of May, 1998.

Became law on the date it was ratified.

S.B. 993

SESSION LAW 1998-3

AN ACT TO ESTABLISH PROCEDURES FOR CONVERSIONS BY HOSPITAL, MEDICAL, AND DENTAL SERVICE CORPORATIONS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 58-65-130(3) reads as rewritten:

"(3) The charter of any corporation subject to the provisions of this Article and Article 66 of this Chapter may be amended to convert that corporation, so amending its charter, into ~~either a mutual nonstock or stock~~ accident and health insurance company or stock life insurance company subject to the provisions of Articles 1 through 64 of this Chapter provided the contractual rights of the subscribers ~~or~~ and certificate holders in the reserves and capital of such of the corporation are adequately protected under rules and regulations adopted by the Commissioner of Insurance, protected. The proposed amendment shall be considered pursuant to G.S. 58-65-131, 58-65-132, and 58-65-133. Other provisions of this section and this Article relating to the procedure for amending the charter shall not apply."

Section 2. Article 65 of Chapter 58 of the General Statutes is amended by adding the following new sections to read:

"§ 58-65-131. Findings; definitions; conversion plan.

(a) Intent and Findings. -- It is the intent of the General Assembly by the enactment of this section, G.S. 58-65-132, and G.S. 58-65-133 to create a procedure for a medical, hospital, or dental service corporation to convert to a stock accident and health insurance company or stock life insurance company that is subject to the applicable provisions of Articles 1 through 64 of this Chapter. Except as provided herein, it is not the intent of the General Assembly to supplant, modify, or repeal other provisions of this Article and Article 66 of this Chapter or the provisions of Chapter 55A of the General Statutes (the Nonprofit Corporation Act) that govern other transactions and the procedures relating to such transactions that apply to corporations governed by the provisions of this Article and Article 66 of this Chapter.

The General Assembly recognizes the substantial and recent changes in market and health care conditions that are affecting these corporations and the benefit of equal regulatory treatment and competitive equality for health care insurers. The General Assembly finds that a procedure for conversion is in the best interest of policyholders because it will provide greater financial stability for these corporations and a greater opportunity for the corporations to remain financially independent. The General Assembly also

finds that if a medical, hospital, or dental service corporation converts to a stock accident and health insurance company or stock life insurance company, the conversion plan must provide a benefit to the people of North Carolina equal to one hundred percent (100%) of the fair market value of the corporation.

(b) Definitions. -- As used in this section, G.S. 58-65-132, and G.S. 58-65-133:

- (1) "Certificate holder" includes an enrollee, as defined in Article 67 of this Chapter, in a health maintenance plan provided by the corporation or a subsidiary or by the new corporation or a subsidiary.
- (2) "Code" means Title 26 of the United States Code, the United States Internal Revenue Code of 1986, as amended.
- (3) "Conversion" means the conversion of a hospital, medical, or dental service corporation to a stock accident and health insurance company or stock life insurance company subject to the applicable provisions of Articles 1 through 64 of this Chapter.
- (4) "Corporation" means a hospital, medical, or dental service corporation governed by this Article that files or is required to file a plan of conversion with the Commissioner under subsection (d) of this section to convert from a hospital, medical, or dental service corporation to a stock accident and health insurance company or stock life insurance company.
- (5) "Foundation" means a newly formed tax-exempt charitable social welfare organization formed and operating under section 501(c)(4) of the Code and Chapter 55A of the General Statutes.
- (6) "New corporation" means a corporation originally governed by this Article that has had its plan of conversion approved by the Commissioner under G.S. 58-65-132 and that has converted to a stock accident and health insurance company or stock life insurance company.

(c) Compliance Required in Certain Events. -- A corporation governed by this Article shall comply with the provisions of this section, G.S. 58-65-132, and G.S. 58-65-133 before it may do any of the following:

- (1) Sell, lease, convey, exchange, transfer, or make other disposition, either directly or indirectly in a single transaction or related series of transactions, of ten percent (10%) of the corporation's assets, as determined by statutory accounting principles, to, or merge or consolidate or liquidate with or into, any business corporation or other business entity, except a business corporation or other business entity that is a wholly owned subsidiary of the corporation. The ten percent (10%) asset limitation in this subdivision does not apply to:
 - a. The purchase, acquisition by assignment or otherwise by the corporation of individual accident and health policies or contracts insuring North Carolina residents, or with respect to accident and health group master policies or contracts, only the percentage portion of those policies or contracts covering North Carolina resident certificate holders, and that are issued by a

company domiciled or licensed to do business in North Carolina, if the purchase is first approved by the Commissioner after notice to the Attorney General, no profit will inure to the benefit of any officer, director, or employee of the corporation or its subsidiaries, the purchase is transacted at arm's length and for fair value, and the purchase will further the corporation's ability to fulfill its purposes;

- b. In the case of a purchase by the corporation of all the common stock of a company domiciled or licensed to do business in North Carolina, that portion of the value of the company which is determined by the Commissioner to be attributable to individual accident and health policies or contracts insuring North Carolina residents or, in the case of accident and health group master policies or contracts, the percentage portion of those policies or contracts covering North Carolina resident certificate holders, if the purchase is first approved by the Commissioner after notice to the Attorney General, no profit will inure to the benefit of any officer, director, or employee of the corporation or its subsidiaries, the purchase is transacted at arm's length and for fair value, and the purchase will further the corporation's ability to fulfill its purposes;
 - c. Granting encumbrances such as security interests or deeds of trust with respect to assets owned by the corporation or any wholly owned subsidiary to secure indebtedness for borrowed money, the proceeds of which are paid solely to the corporation or its wholly owned subsidiaries and remain subject to the provisions of this section; and
 - d. Sales or other transfers in the ordinary course of business for fair value of any interest in real property or stocks, bonds, or other securities within the investment portfolio owned by the corporation or any wholly owned subsidiary, the proceeds of which are paid solely to the corporation or any wholly owned subsidiary and remain subject to the provisions of this section.
- (2) Directly or indirectly issue, sell, convey, exchange, transfer, or make other disposition to any party of any equity or ownership interest in the corporation or in any business entity that is owned by or is a subsidiary of the corporation, including stock, securities, or bonds, debentures, notes or any other debt or similar obligation that is convertible into any equity or ownership interest, stock or securities. This subdivision shall not be construed to prohibit the corporation or a wholly owned subsidiary, with the approval of the Commissioner after notice to the Attorney General, from investing in joint ventures or partnerships with unrelated third parties, if no profit will inure to the benefit of any officer, director, or employee of the corporation or its subsidiaries, the transaction is conducted at arm's length and for fair value, and the transaction furthers the corporation's ability to fulfill its purposes.
- (3) Permit its aggregate annual revenues, determined in accordance with statutory accounting principles, from all for-profit activities or

operations, including but not limited to those of the corporation, any wholly owned subsidiaries, and any joint ventures or partnerships, to exceed forty percent (40%) of the aggregate annual revenues, excluding investment income, of the corporation and its subsidiaries and determined in accordance with statutory accounting principles; or

- (4) Permit its aggregate assets for four consecutive quarters, determined in accordance with statutory accounting principles, employed in all for-profit activities or operations, including, but not limited to, those assets owned or controlled by any for-profit wholly owned subsidiaries, to exceed forty percent (40%) of the aggregate admitted assets of the corporation and its subsidiaries for four consecutive quarters, determined in accordance with statutory accounting principles.

In determining whether the corporation must comply with the provisions of this section, G.S. 58-65-132, and G.S. 58-65-133, the Commissioner may review and consolidate actions of the corporation, its subsidiaries, and other legal entities in which the corporation directly or indirectly owns an interest, and treat the consolidated actions as requiring a conversion. An appeal of the Commissioner's order that consolidated actions require a conversion shall lie directly to the North Carolina Court of Appeals, provided that any party may petition the North Carolina Supreme Court, pursuant to G.S. 7A-31(b), to certify the case for discretionary review by the Supreme Court prior to determination by the Court of Appeals. Appeals under this subsection must be filed within 30 days of the Commissioner's order and shall be considered in the most expeditious manner practical. The corporation must file a plan of conversion within 12 months of the later of the issuance of the Commissioner's order or a final decision on appeal.

(d) Charter Amendment for Conversion. -- A corporation may propose to amend its charter pursuant to this Article to convert the corporation to a stock accident and health insurance company or stock life insurance company subject to the applicable provisions of Articles 1 through 64 of this Chapter. The proposed amended charter and a plan for conversion as described in subsection (e) of this section shall be filed with the Commissioner for approval.

(e) Filing Conversion Plan; Costs of Review. -- A corporation shall file a plan for conversion with the Commissioner and submit a copy to the Attorney General at least 120 days before the proposed date of conversion. The corporation or the new corporation shall reimburse the Department of Insurance and the office of the Attorney General for the actual costs of reviewing, analyzing, and processing the plan. The Commissioner and the Attorney General may contract with experts, consultants, or other professional advisors to assist in reviewing the plan. These contracts are personal professional service contracts exempt from Articles 3 and 3C of Chapter 143 of the General Statutes. Contract costs for these personal professional services shall not exceed an amount that is reasonable and appropriate for the review of the plan.

(f) Plan Requirements. -- A plan of conversion submitted to the Commissioner shall state with specificity the following terms and conditions of the proposed conversion:

- (1) The purposes of the conversion.
- (2) The proposed articles of incorporation of the new corporation.
- (3) The proposed bylaws of the new corporation.
- (4) A description of any changes in the new corporation's mode of operations after conversion.
- (5) A statement describing the manner in which the plan provides for the protection of all existing contractual rights of the corporation's subscribers and certificate holders to medical or hospital services or the payment of claims for reimbursement for those services. The corporation's subscribers and certificate holders shall have no right to receive any assets, surplus, capital, payment or distribution or to receive any stock or other ownership interest in the new corporation in connection with the conversion:
- (6) A statement that the legal existence of the corporation does not terminate and that the new corporation is subject to all liabilities, obligations, and relations of whatever kind of the corporation and succeeds to all property, assets, rights, interests, and relations of the corporation.
- (7) Documentation showing that the corporation, acting by its board of directors, trustees, or other governing authority, has approved the plan. It shall not be necessary for the subscribers or certificate holders of the corporation to vote on or approve the plan of conversion, any amendments to the corporation's articles of incorporation or bylaws, or the articles of incorporation or the bylaws of the new corporation, notwithstanding any provision to the contrary in this Article or Article 66 of this Chapter or in the articles of incorporation or bylaws of the corporation.
- (8) The business plan of the new corporation, including, but not limited to, a comparative premium rate analysis of the new corporation's major plans and product offerings, that, among other things, compares actual premium rates for the three-year period before the filing of the plan for conversion and forecasted premium rates for a three-year period following the proposed conversion. This rate analysis shall address the forecasted effect, if any, of the proposed conversion on the cost to policyholders or certificate holders of the new corporation and on the new corporation's underwriting profit, investment income, and loss and claim reserves, including the effect, if any, of adverse market or risk selection upon these reserves. Information provided under this subsection is confidential pursuant to G.S. 58-19-40.
- (9) Any conditions, other than approval of the plan of conversion by the Commissioner, to be fulfilled by a proposed date upon which the conversion would become effective.

(10) The proposed articles of incorporation and bylaws of the Foundation, containing the provisions required by G.S. 58-65-133(h).

(11) Any proposed agreement between the Foundation and the new corporation, including, but not limited to, any agreement relating to the voting or registration for sale of any capital stock to be issued by the new corporation to the Foundation.

(g) Public Comment. -- Within 20 days of receiving a plan to convert, the Commissioner shall publish a notice in one or more newspapers of general circulation in the corporation's service area describing the name of the corporation, the nature of the plan filed under G.S. 58-65-131(d), and the date of receipt of the plan. The notice shall indicate that the Commissioner will solicit public comments and hold three public hearings on the plan. The public hearings must be completed within 60 days of the filing of the conversion plan. The written public comment period will be held open until 10 days after the last public hearing. For good cause the Commissioner may extend these deadlines once for a maximum of 30 days. The Commissioner shall provide copies of all written public comments to the Attorney General.

(h) Public Access to Records. -- All applications, reports, plans, or other documents under this section, G.S. 58-65-132, and G.S. 58-65-133 are public records unless otherwise provided in this Chapter. The Commissioner shall provide the public with prompt and reasonable access to public records relating to the proposed conversion of the corporation. Access to public records covered by this section shall be made available for at least 30 days before the end of the public comment period.

"§ 58-65-132. Review and approval of conversion plan; new corporation.

(a) Approval of Plan of Conversion.-- The Commissioner shall approve the plan of conversion and issue a certificate of authority to the new corporation to transact business in this State only if the Commissioner finds all of the following:

(1) The plan of conversion meets the requirements of G.S. 58-65-131, this section, and G.S. 58-65-133.

(2) Upon conversion, the new corporation will meet the applicable standards and conditions under this Chapter, including applicable minimum capital and surplus requirements.

(3) The plan of conversion adequately protects the existing contractual rights of the corporation's subscribers and certificate holders to medical or hospital services and payment of claims for reimbursement for those services.

(4) No director, officer, or employee of the corporation will receive:
a. Any fee, commission, compensation, or other valuable consideration for aiding, promoting, or assisting in the conversion of the corporation other than compensation paid to any director, officer, or employee of the corporation in the ordinary course of business; or
b. Any distribution of the assets, surplus, capital, or capital stock of the new corporation as part of a conversion.

- (5) The corporation has complied with all material requirements of this Chapter, and disciplinary action is not pending against the corporation.
- (6) The plan of conversion is fair and equitable and not prejudicial to the contractual rights of the policyholders and certificate holders of the new corporation.
- (7) The plan of conversion is in the public interest. The Commissioner shall find that the plan is in the public interest only if it provides a benefit for the people of North Carolina equal to the value of the corporation at the time of conversion, in accordance with the criteria set out in this subdivision. In determining whether the plan of conversion is in the public interest, the Commissioner may also consider other factors, including, but not limited to, those relating to the accessibility and affordability of health care. The Commissioner must determine that the plan of conversion meets all of the following criteria:
 - a. Consideration, determined by the Commissioner to be equal to one hundred percent (100%) of the fair market value of the corporation, will be conveyed or issued by the corporation to the Foundation at the time the new corporation files its articles of incorporation. If the consideration to be conveyed is all of the common stock of the new corporation that is then issued and outstanding at the time of conversion, and there is no other capital stock of any type or nature then outstanding, it is conclusively presumed that the Foundation will acquire the fair market value of the corporation.
 - b. At any time after the conversion, the new corporation may issue, in a public offering or a private placement, additional shares of common stock of the same class and having the same voting, dividend, and other rights as that transferred to the Foundation, subject to the applicable provisions of Chapter 55 of the General Statutes and any voting and registration agreements.
- (8) The plan of conversion contains a proposed voting agreement and registration agreement between the Foundation and the proposed new corporation that meets the requirements of G.S. 58-65-133.
- (9) The Attorney General has given approval pursuant to G.S. 58-65-133(h).

(b) New Corporation. -- After issuance of the certificate of authority as provided in subsection (a) of this section, the new corporation shall no longer be subject to this Article and Article 66 of this Chapter but shall be subject to and comply with all applicable laws and regulations applicable to domestic insurers and Chapter 55 of the General Statutes, except that Articles 9 and 9A of Chapter 55 shall not apply to the new corporation. The new corporation shall file its articles of incorporation, as amended and certified by the Commissioner, with the North Carolina Secretary of State. The legal existence of the corporation does not terminate, and the new corporation is a continuation of the corporation. The conversion shall only

be a change in identity and form of organization. Except as provided in subdivision (a)(7) of this subsection, all property, assets, rights, liabilities, obligations, interests, and relations of whatever kind of the corporation shall continue and remain in the new corporation. All actions and legal proceedings to which the corporation was a party prior to conversion shall be unaffected by the conversion.

(c) Final Decision and Order; Procedures. -- The Commissioner's final decision and order regarding the plan of conversion shall include findings of fact and conclusions of law. Findings of fact shall be based upon and supported by substantial evidence, including evidence submitted with the plan by the corporation and evidence obtained at hearings held by the Commissioner. A person aggrieved by a final decision of the Commissioner approving or disapproving a conversion may petition the Superior Court of Wake County within 30 days thereafter for judicial review. An appeal from a final decision and order of the Commissioner under this section shall be conducted pursuant to G.S. 58-2-75. Chapter 150B of the General Statutes does not apply to the procedures of G.S. 58-65-131, this section, and G.S. 58-65-133. This subsection does not apply to appeal of an order of the Commissioner issued pursuant to G.S. 58-65-131(c).

(d) Attorney General's Enforcement Authority; Legal Action on Validity of Plan of Conversion. --

- (1) Nothing in this Chapter limits the power of the Attorney General to seek a declaratory judgment or to take other legal action to protect or enforce the rights of the public in the corporation.
- (2) Any legal action with respect to the conversion must be filed in the Superior Court of Wake County.

"§ 58-65-133. Creation and operation of foundation.

(a) Creation. -- A Foundation shall be created to receive the fair market value of the corporation as provided in G.S. 58-65-132(a)(7) when the corporation converts.

(b) Purpose. -- The charitable purpose of the Foundation shall be to promote the health of the people of North Carolina. For a period of 10 years from the effective date of the conversion, the Foundation may not, without the consent of the Attorney General, establish or operate any entity licensed pursuant to Chapter 58 of the General Statutes that would compete with the new corporation or any of its subsidiaries.

(c) Board of Directors. -- The initial board of directors of the foundation shall consist of 11 members appointed by the Attorney General from a list of nominees recommended pursuant to subsection (d) of this section. The Attorney General shall stagger the terms of the initial appointees so that six members serve two-year terms and five members serve four-year terms. The board shall fill a vacancy in an initial term. Their successors shall be chosen by the board of directors of the Foundation in accordance with the bylaws of the Foundation and shall serve four-year terms. No member may serve more than two consecutive full terms nor more than 10 consecutive years. The Foundation may increase or decrease the size of the board in accordance with its bylaws, provided that the board shall have no fewer than

nine directors and no more than 15 directors and that a decrease in size does not eliminate the then current term of any director.

(d) Advisory Committee. -- An advisory committee shall be formed to (i) develop, subject to the approval of the Attorney General, the criteria for selection of the Foundation's initial board of directors and (ii) nominate candidates for the initial board of directors. The advisory committee shall be comprised of the following 11 members: three representatives of the business community selected by North Carolina Citizens for Business and Industry, three representatives of the public and private medical school community selected by The University of North Carolina Board of Governors, three representatives of private foundations and other nonprofit organizations selected by the North Carolina Center for Nonprofits, a representative of the North Carolina Association of Hospitals and Health Care Networks, and a representative of the North Carolina Medical Society. After receiving a copy of the proposed plan of conversion, the Attorney General shall immediately notify these organizations, and the advisory committee shall be constituted within 45 days thereafter.

The advisory committee's criteria shall ensure an open recruitment process for the directors. The advisory committee shall nominate 22 residents of North Carolina for the 11 positions to be filled by the Attorney General. The Attorney General shall retain an independent executive recruiting firm or firms to assist the advisory committee in its work.

(e) Foundation and New Corporation Independent. -- The Foundation and its directors, officers, and employees shall be and remain independent of the new corporation and its affiliates. No director, officer, or employee of the Foundation shall serve as a director, officer, or employee of the new corporation or any of its affiliates. No director, officer, or employee of the new corporation or any of its affiliates shall serve as a director, officer, or employee of the Foundation. This subsection shall no longer apply after (i) 10 years following the effective date of the conversion or (ii) the divestment by the Foundation of at least ninety-five percent (95%) of the stock of the new corporation received pursuant to G.S. 58-65-132(a)(7)a. and subsection (a) of this section, whichever occurs later.

(f) Voting and Stock Registration Agreement. -- The Foundation and the new corporation shall operate under a voting agreement and a stock registration agreement, approved by the Commissioner and the Attorney General, that provides at a minimum for the following:

- (1) The Foundation will vote the common stock in the new corporation for directors of the new corporation nominated by the board of directors of the new corporation to the extent provided by the terms of the voting agreement.
- (2) The voting restrictions will not apply to common stock of the new corporation sold by the Foundation.
- (3) The board of directors of the new corporation will determine the timing of any initial public offering of the new corporation's common stock, either by the new corporation or by the Foundation, and the Foundation shall have demand registration rights and optional "piggy-back" or "incidental" registration rights in connection with any offerings of the new corporation's

common stock by the new corporation, on the terms and conditions set forth in a stock registration agreement and agreed upon by the new corporation and the Foundation and approved by the Commissioner and the Attorney General.

- (4) The voting agreement may contain additional terms, including (i) voting and ownership restrictions with regard to the common stock of the new corporation and (ii) provisions for the voting or registration for sale of any common stock to be issued to the Foundation by the new corporation.

(g) Costs. -- The corporation shall pay the reasonable expenses of the advisory committee and executive search firm and the costs of any consultants, experts, or other professional advisors retained by the Attorney General incident to review under this section.

(h) Attorney General's Approval. -- Before the Commissioner approves a plan of conversion pursuant to G.S. 58-65-132, the Attorney General, on behalf of the public and charitable interests in this State, must approve the determination relating to the fair market value of the corporation under G.S. 58-65-132(a)(7), the articles of incorporation and bylaws of the foundation, and all proposed agreements between the new corporation and the Foundation, including stock voting or registration agreements. The Attorney General may seek advice on these matters from consultants, investment bankers, and other professional advisors engaged by the Commissioner or Attorney General incident to review of the plan. The proposed articles of incorporation of the Foundation shall provide for all of the following:

- (1) State that the Foundation is organized and operated exclusively for charitable purposes and for the promotion of social welfare.
- (2) State that no part of the net earnings of the Foundation shall inure to the benefit of any private shareholder or individual.
- (3) State that the Foundation shall not engage in any political campaign activity or the making of political contributions.
- (4) Prohibit the Foundation from paying or incurring any amount that, if paid by an organization classified as a "private foundation" under section 509(a) of the Code, would constitute a "taxable expenditure" as defined by sections 4945(d)(1) and (2) of the Code.
- (5) Prohibit the Foundation from engaging in any self-dealing for the benefit of its directors, officers, or employees.
- (6) Provide for an ongoing community advisory committee to offer broad public input to the Foundation concerning its operations and activities.
- (7) Provide that the Foundation, after its first three years of operation, will pay out the lesser of (i) "qualifying distributions" of "distributable amounts," as defined in section 4942 of the Code, as if the Foundation were classified as a private Foundation subject to the distribution requirements, but not the taxes imposed, under that section or (ii) substantially all of its income, less qualifying expenses. In no event shall the Foundation be required to invade its corpus to meet the distribution requirements under this subdivision.

- (8) State that provisions in the articles of incorporation that are either required by this subdivision or designated by the Attorney General cannot be amended without the prior written approval of the Attorney General.

Within 120 days of the end of its fiscal year, the Foundation shall provide the Attorney General, the Commissioner, the Speaker of the House of Representatives, and the President Pro Tempore of the Senate its State and federal tax returns for the preceding fiscal year. The tax returns shall be made available for public inspection."

Section 3. G.S. 58-65-160 is repealed.

Section 4. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 20th day of May, 1998.

Became law upon approval of the Governor at 9:45 a.m. on the 22nd day of May, 1998.

S.B. 1420

SESSION LAW 1998-4

AN ACT TO PERMIT THE SHORT-TERM USE OF MOBILE STRUCTURES WHEN NONRESIDENTIAL STRUCTURES ARE DAMAGED BY FIRE OR ACTS OF GOD.

The General Assembly of North Carolina enacts:

Section 1. Notwithstanding any zoning, occupancy, or other ordinance or statute to the contrary, when a nonresidential building in Halifax County is damaged by fire or an "act of God," the structure may be temporarily replaced with a mobile home or similar manufactured structure for a period of one year to allow for continued operations while the damaged building is repaired or rebuilt.

Section 2. This act applies to Halifax County only.

Section 3. This act is effective when it becomes law and expires on June 30, 1999.

In the General Assembly read three times and ratified this the 4th day of June, 1998.

Became law on the date it was ratified.

S.B. 1126

SESSION LAW 1998-5

AN ACT TO AMEND THE TEACHER COMPETENCY TESTING PROVISIONS OF THE EXCELLENT SCHOOLS ACT, TO PROVIDE FOR ANNUAL EVALUATIONS OF CERTIFIED PUBLIC SCHOOL EMPLOYEES IN ALL LOW-PERFORMING SCHOOLS, AND TO CREATE ASSESSMENT TEAMS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 115C-105.38A reads as rewritten:

"§ 115C-105.38A. *Teacher competency assurance.*

(a) General Knowledge Test. --

(1) Each assistance team assigned to a low-performing school during the 1997-98 school year shall review the team's evaluations of certified staff members to determine which staff members have been designated by the team as Category 3 teachers. The assistance team shall then determine whether lack of general knowledge contributed to the Category 3 designation. If the assistance team determines that a certified staff member's lack of general knowledge contributed to that staff member being designated as a Category 3 teacher, the assistance team shall submit the staff member's name to the State Board. Upon receipt of the notification, The the State Board of Education shall require all that the certified staff members working in schools at the time the schools are identified as low-performing under this Article and to which the State Board has assigned an assistance team to identified by the assistance teams demonstrate their general knowledge by acquiring a passing score on a test designated by the State Board. The first general knowledge test shall be administered State Board shall administer the general knowledge test required under this subdivision at the end of the 1997-98 school year. In subsequent years, the State Board shall determine when to administer the test for certified staff members in schools that are identified that year as low-performing and assigned an assistance team.

(2) During the 1998-99 school year and thereafter, either the principal assigned to a low-performing school or the assistance team assigned to a low-performing school may recommend to the State Board that a certified staff member take a general knowledge test. A principal or an assistance team may make this recommendation if the principal or the assistance team determines that the certified staff member's performance is impaired by the staff member's lack of general knowledge. After receipt of the notification, but prior to the end of the fiscal year, the State Board shall require that all certified staff members identified under this subdivision demonstrate their general knowledge by acquiring a passing score on a test designated by the State Board.

(b) Exemptions. -- The following certified staff members shall be exempt from taking the general knowledge test required under subsection (a) of this section.

- (1) Certified staff members who have:
 - a. Taken and passed the PRAXIS I exam as a condition of entry into a school of education; and
 - b. Taken and passed the PRAXIS II exam after July 1, 1996.
- (2) Certified staff members who have previously taken and passed the general knowledge test.

The exemptions under this subsection shall expire July 1, 2000, unless the State Board adopts a policy to continue them.

(c) Remediation. -- Certified staff members who do not acquire a passing score on the general knowledge test required under subsection (a) of this section shall engage in a remediation plan based upon the deficiencies

identified by the ~~test~~, test, or an assistance team, or a principal. The remediation plan for deficiencies of individual certified staff members shall consist of up to a semester of university or community college training or coursework ~~or both, or other similar activity to correct the deficiency.~~ The remediation shall be developed by the State Board of Education in consultation with the Board of Governors of The University of North Carolina. The State Board shall reimburse the institution providing the remediation any tuition and fees incurred under this section. If the remediation plan requires that the staff member engage in a full-time course of study or training, the staff member shall be considered on leave with pay.

(d) ~~Retesting.~~ Retesting; Dismissal. -- Upon completion of the ~~first remediation plan,~~ plan required under subsection (c) of this section, the certified staff member shall take the general knowledge test a second time. If the certified staff member fails to acquire a passing score on the second test, the State Board shall ~~provide a program of further remediation under subsection (c) of this section,~~ begin a dismissal proceeding under G.S. 115C-325(q)(2a).

~~(e) Dismissal.~~ -- ~~Upon completion of the second remediation plan, the certified staff member shall take the general knowledge test a third time. If the certified staff member fails to acquire a passing score on the third test, the State Board shall begin dismissal proceedings under G.S. 115C-325(q)(2a).~~

(f) Other Actions Not Precluded. -- Nothing in this section shall be construed to restrict or postpone the following actions:

- (1) The dismissal of a principal under G.S. 115C-325(q)(1);
- (2) The dismissal of a teacher, assistant principal, director, or supervisor under G.S. 115C-325(q)(2);
- (3) The dismissal or demotion of a career employee for any of the grounds listed under G.S. 115C-325(e);
- (4) The nonrenewal of a school administrator's or probationary teacher's contract of employment; or
- (5) The decision to grant career status.

~~(g) Future Testing.~~ -- ~~The State Board shall develop a plan for testing and shall test all certified staff members in low-performing schools identified at the end of the 1999-2000 school year. When developing the plan, the State Board shall consider administering tests in the area of an individual's certification as well as the general knowledge test. The State Board shall report this plan to the Joint Legislative Education Oversight Committee prior to November 15, 1998."~~

Section 2. G.S. 115C-325(q)(2a) reads as rewritten:

"(2a) Notwithstanding any other provision of this section or any other law, this subdivision shall govern the State Board's dismissal of certified staff members who have engaged in a remediation plan under G.S. ~~115C-105.38A(a)~~ 115C-105.38A(c) but who, after ~~two retests,~~ one retest, fail to meet the general knowledge standard set by the State Board. The failure to meet the general knowledge standard after ~~two retests~~ one retest shall be substantial evidence of the inadequate performance of the certified staff member.

A certified staff member may request a hearing before a panel of three members of the State Board within 30 days of any dismissal under this subdivision. The State Board shall adopt procedures to ensure that due process rights are afforded to certified staff members recommended for dismissal under this subdivision. Decisions of the panel may be appealed on the record to the State Board, with further right of judicial review under Chapter 150B of the General Statutes."

Section 3. G.S. 115C-326 is repealed.

Section 4. Article 22 of Chapter 115C of the General Statutes is amended by adding a new Part to read:

"Part 7. Personnel Evaluations.

"§ 115C-333. Evaluation of certified employees including certain superintendents; action plans; State board notification upon dismissal of employees.

(a) Annual Evaluations; Low-Performing Schools. -- Local school administrative units shall evaluate at least once each year all certified employees assigned to a school that has been identified as low-performing, but has not received an assistance team. The evaluation shall occur early enough during the school year to provide adequate time for the development and implementation of an action plan if one is recommended under subsection (b) of this section. If the employee is a teacher as defined under G.S. 115C-325(a)(6), either the principal, the assistant principal who supervises the teacher, or an assessment team assigned under G.S. 115C-334 shall conduct the evaluation. If the employee is a school administrator as defined under G.S. 115C-287.1(a)(3), either the superintendent or the superintendent's designee shall conduct the evaluation.

Notwithstanding this subsection or any other law, all teachers who have not attained career status shall be observed at least three times annually by the principal or the principal's designee and at least once annually by a teacher and shall be evaluated at least once annually by a principal. All other employees defined as teachers under G.S. 115C-325(a)(6) who are assigned to schools that are not designated as low-performing shall be evaluated annually unless a local board adopts rules that allow specified categories of teachers with career status to be evaluated more or less frequently. Local boards also may adopt rules requiring the annual evaluation of noncertified employees. This section shall not be construed to limit the duties and authority of an assistance team assigned to a low-performing school under G.S. 115C-105.38.

A local board shall use the performance standards and criteria adopted by the State Board unless the board develops an alternative evaluation that is properly validated and that includes standards and criteria similar to those adopted by the State Board. All other provisions of this section shall apply if a local board uses an evaluation other than one adopted by the State Board.

(b) Action Plans. -- If a certified employee receives an unsatisfactory or below standard rating on any function of the evaluation that is related to the employee's instructional duties, the individual or team that conducted the evaluation shall recommend to the superintendent that: (i) the employee receive an action plan designed to improve the employee's performance; or (ii) the superintendent recommend to the local board that the employee be

dismissed or demoted. The superintendent shall determine whether to develop an action plan or to recommend a dismissal proceeding. Action plans shall be developed by the person who evaluated the employee or the employee's supervisor unless the evaluation was conducted by an assistance team or an assessment team. If the evaluation was conducted by an assistance team or an assessment team, that team shall develop the action plan in collaboration with the employee's supervisor. Action plans shall be designed to be completed within 90 instructional days or before the beginning of the next school year. The State Board shall develop guidelines that include strategies to assist local boards in evaluating certified employees and developing effective action plans within the time allotted under this section. Local boards may adopt policies for the development and implementation of action plans or professional development plans for employees who do not require action plans under this section.

(c) Reevaluation. -- Upon completion of an action plan under subsection (b) of this section, the superintendent, the superintendent's designee, or the assessment team shall evaluate the employee a second time. If on the second evaluation the employee receives one unsatisfactory or more than one below standard rating on any function that is related to the employee's instructional duties, the superintendent shall recommend that the employee be dismissed or demoted under G.S. 115C-325. The results of the second evaluation shall constitute substantial evidence of the employee's inadequate performance.

(d) State Board Notification. -- If a local board dismisses an employee for any reason except a reduction in force under G.S. 115C-325(e)(1)l. it shall notify the State Board of the action, and the State Board annually shall provide to all local boards the names of those individuals. If a local board hires one of these individuals, within 60 days the superintendent or the superintendent's designee shall observe the employee, develop an action plan to assist the employee, and submit the plan to the State Board. The State Board shall review the action plan and may provide comments and suggestions to the superintendent. If on the next evaluation the employee receives an unsatisfactory or below standard rating on any function that is related to the employee's instructional duties, the local board shall notify the State Board and the State Board shall revoke the employee's certificate under G.S. 115C-296(d). If on the next evaluation the employee receives at least a satisfactory rating on all the functions related to the employee's instructional duties, the local board shall notify the State Board that the employee is in good standing and the State Board shall not continue to provide the individual's name to local boards under this subsection unless the employee is subsequently dismissed under G.S. 115C-325 except for a reduction in force.

(e) Civil Immunity. -- There shall be no liability for negligence on the part of the State Board of Education or a local board of education, or their employees, arising from any action taken or omission by any of them in carrying out the provisions of this section. The immunity established by this subsection shall not extend to gross negligence, wanton conduct, or intentional wrongdoing that would otherwise be actionable. The immunity established by this subsection shall be deemed to have been waived to the

extent of indemnification by insurance, indemnification under Articles 31A and 31B of Chapter 143 of the General Statutes, and to the extent sovereign immunity is waived under the Tort Claims Act, as set forth in Article 31 of Chapter 143 of the General Statutes.

(f) Local Board Evaluation of Certain Superintendents. -- Each year the local board of education shall evaluate the superintendent employed by the local school administrative unit and report to the State Board the results of that evaluation if during that year the State Board designated as low-performing:

- (1) One or more schools in a local school administrative unit that has no more than 10 schools.
- (2) Two or more schools in a local school administrative unit that has no more than 20 schools.
- (3) Three or more schools in a local school administrative unit that has more than 20 schools.

"§ 115C-334. Assessment teams.

The State Board shall develop guidelines for local boards to use to create assessment teams. A local board shall assign an assessment team to every low-performing school in the local school administrative unit that has not received an assistance team. Local boards shall ensure that assessment team members are trained in the proper administration of the employee evaluation used by the local school administrative unit. If service on an assessment team is an additional duty for an employee of a local board, the board may pay the employee for that additional work.

Assessment teams shall have the following duties:

- (1) Conduct evaluations of certified employees in low-performing schools;
- (2) Provide technical assistance and training to principals, assistant principals, superintendents, and superintendents' designees who conduct evaluations of certified employees;
- (3) Develop action plans for certified employees; and
- (4) Assist principals, assistant principals, superintendents, and superintendents' designees in the development and implementation of action plans.

"§ 115C-335. Development of performance standards and criteria for certified employees; training and remediation programs.

(a) Development of Performance Standards. -- The State Board, in consultation with local boards of education, shall revise and develop uniform performance standards and criteria to be used in evaluating certified public school employees, including school administrators. These standards and criteria shall include improving student achievement, employee skills, and employee knowledge. The standards and criteria for school administrators also shall include building-level gains in student learning and effectiveness in providing for school safety and enforcing student discipline. The State Board shall develop rules regarding the use of these standards and criteria. The State Board also shall develop guidelines for evaluating superintendents. The guidelines shall include criteria for evaluating a superintendent's effectiveness in providing safe schools and enforcing student discipline.

(b) Training. -- The State Board, in collaboration with the Board of Governors of The University of North Carolina, shall develop programs designed to train principals and superintendents in the proper administration of the employee evaluations developed by the State Board. The Board of Governors shall use the professional development programs for public school employees that are under its authority to make this training available to all principals and superintendents at locations that are geographically convenient to local school administrative units. The programs shall include methods to determine whether an employee's performance has improved student learning, the development and implementation of appropriate action plans, the process for contract nonrenewal, and the dismissal process under G.S. 115C-325. The Board of Governors shall ensure that the subject matter of the training programs is incorporated into the masters in school administration programs offered by the constituent institutions. The State Board, in collaboration with the Board of Governors, also shall develop in-service programs for certified public school employees that may be included in an action plan created under G.S. 115C-333(b). The Board of Governors shall use the professional development programs for public school employees that are under its authority to make this training available at locations that are geographically convenient to local school administrative units."

Section 5. G.S. 115C-296(d) reads as rewritten:

"(d) The State Board shall adopt rules to establish the reasons and procedures for the suspension and revocation of certificates. The State Board shall revoke the certificate of a teacher or school administrator if the State Board receives notification from a local board that a teacher or school administrator has received an unsatisfactory or below standard rating under G.S. 115C-333(d). In addition, the State Board may revoke or refuse to renew a teacher's certificate when:

- (1) The Board identifies the school in which the teacher is employed as low-performing under G.S. 115C-105.37; and
- (2) The assistance team assigned to that school under G.S. 115C-105.38 makes the recommendation to revoke or refuse to renew the teacher's certificate for one or more reasons established by the State Board in its rules for certificate suspension or revocation.

The State Board may issue subpoenas for the purpose of obtaining documents or the testimony of witnesses in connection with proceedings to suspend or revoke certificates."

Section 6. G.S. 115C-276 is amended by adding a new subsection to read:

"(s) To Provide for Annual Evaluations and Action Plans. -- The superintendent shall provide for the annual evaluation of all certified employees assigned to low-performing schools that did not receive an assistance team. The superintendent shall determine whether all principals and assistant principals who evaluate certified employees are trained in the proper administration of the employee evaluations and the development of appropriate action plans. The superintendent also shall arrange for principals and assistant principals who evaluate certified employees to receive the appropriate training."

Section 7. G.S. 115C-288 is amended by adding a new subsection to read:

"(i) To Evaluate Certified Employees and Develop Action Plans. -- Each school year, the principal assigned to a low-performing school that has not received an assistance team shall provide for the evaluation of all certified employees assigned to the school. The principal also shall develop action plans as provided under G.S. 115C-333(b) and shall monitor an employee's progress under an action plan."

Section 8. The State Board of Education may expend funds appropriated to State Aid to Local School Administrative Units, or to the Department of Public Instruction, or both, to develop certified employee evaluations. The Board of Governors of The University of North Carolina shall direct resources allocated to entities affiliated with the Leadership Academy to accomplish the requirements of G.S. 115C-335(b) created under this act. Prior to December 15, 1998, the State Board shall provide to the Joint Legislative Education Oversight Committee a progress report on the development of the certified employee evaluations and the guidelines for assessment teams.

Section 9. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 8th day of June, 1998.

Became law upon approval of the Governor at 10:09 a.m. on the 9th day of June, 1998.

H.B. 1261

SESSION LAW 1998-6

AN ACT TO ADD PASQUOTANK COUNTY TO THOSE COUNTIES IN WHICH IT IS UNLAWFUL TO REMOVE OR DESTROY ELECTRONIC COLLARS ON DOGS.

The General Assembly of North Carolina enacts:

Section 1. Section 4 of Chapter 699 of the 1993 Session Laws, as amended by Chapter 682 of the 1995 Session Laws and by S.L. 1997-150, reads as rewritten:

"Sec. 4. This act applies only to Alamance, Avery, Beaufort, Burke, Caldwell, Caswell, Craven, Cumberland, Haywood, Hyde, Jackson, McDowell, Orange, Pasquotank, Pitt, Rockingham, Swain, Macon, Henderson, Transylvania, Union, and Wilkes Counties."

Section 2. This act becomes effective December 1, 1998, and applies to offenses committed on or after that date.

In the General Assembly read three times and ratified this the 15th day of June, 1998.

Became law on the date it was ratified.

H.B. 1306

SESSION LAW 1998-7

AN ACT TO ALLOW THE AVERY COUNTY BOARD OF EDUCATION TO BUILD A SCHOOL BUILDING ON LAND NOT OWNED IN FEE SIMPLE BY THE BOARD.

The General Assembly of North Carolina enacts:

Section 1. Notwithstanding G.S. 115C-521(d), the Avery County Board of Education may provide for the erection or repair of a school building on a site donated by the Crossnore School, Inc., whether or not the deed to the property contains a condition subsequent or possibility of reverter.

Section 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 16th day of June, 1998.

Became law on the date it was ratified.

H.B. 1328

SESSION LAW 1998-8

AN ACT TO PROVIDE THAT A FRANCHISED NATURAL GAS DISTRIBUTION COMPANY THAT IS NOT PROVIDING SERVICE TO AT LEAST SOME PORTION OF CAMDEN, CURRITUCK, DARE, OR TYRRELL COUNTIES BY JULY 1, 1998, SHALL LOSE ITS EXCLUSIVE FRANCHISE RIGHTS TO THE COUNTY NOT BEING SERVED.

The General Assembly of North Carolina enacts:

Section 1. Notwithstanding the provisions of G.S. 62-36A and the rules developed by the Utilities Commission pursuant to that section, a franchised natural gas local distribution company that the Commission determines is not providing adequate service to at least some portion of a county within its franchise territory by July 1, 1998, shall forfeit its exclusive franchise rights to that county.

Section 2. This act applies only to Camden, Currituck, Dare, and Tyrrell Counties.

Section 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 16th day of June, 1998.

Became law on the date it was ratified.

S.B. 1193

SESSION LAW 1998-9

AN ACT TO MAKE AN EMERGENCY APPROPRIATION, ON THE REQUEST OF THE GOVERNOR, TO COVER THE COSTS OF THE YEAR 2000 CONVERSION IN ALL STATE DEPARTMENTS AND AGENCIES.

Whereas, many existing computer systems will not operate properly at the turn of the century; and

Whereas, this problem, which is known as the "Year 2000 Problem" is estimated to cost between three hundred and six hundred billion dollars on a national basis; and

Whereas, the cost for the federal government alone is estimated at four billion dollars; and

Whereas, in State government agencies, 755 out of 1347 existing applications will not operate properly with a year 2000 date; and

Whereas, major State computer systems such as the tax entry system, the Food Stamp Program system, the Work First and Medicaid systems, the salary administration system at a major State agency, and the student admissions system at a State university, will not operate properly with a year 2000 date; and

Whereas, State assets other than computers including elevators, security systems, traffic lights, and HVAC systems, will not operate properly at the turn of the century; and

Whereas, because of the scope of the problem in both the public and the private sector, there is a shortage of programmers able to solve the State Year 2000 problem; and

Whereas, the Executive Budget Act authorizes the General Assembly to make an emergency appropriation to the Program for the 1997-98 fiscal year upon the request of the Governor; and

Whereas, the Governor has made such a request in a letter to the President Pro Tempore of the Senate and the Speaker of the House of Representatives; and

Whereas, an emergency appropriation would allow for uninterrupted year 2000 conversion for State agencies; and

Whereas, an emergency appropriation would avoid price increases that may occur should vendor availability diminish due to delays in contracting; and

Whereas, an emergency appropriation would allow State agencies to meet the conversion deadlines in order to begin testing in the 1999 calendar year; and

Whereas, an emergency appropriation would provide for continued conversion activity by all vendors currently under contract and would enable State agencies to avoid time delays associated with new vendors; Now, therefore,

The General Assembly of North Carolina enacts:

Section 1. There is appropriated from the General Fund to the Department of Commerce, Year 2000 Reserve Fund, the sum of twenty million five hundred six thousand three hundred sixty-seven dollars (\$20,506,367) for the 1997-98 fiscal year to cover the costs of the year 2000 conversion in General Fund agencies during the 1997-99 fiscal biennium.

Section 2. From funds appropriated to the Department of Transportation for the 1997-98 fiscal year, the sum of six million eight hundred forty thousand six hundred thirty dollars (\$6,840,630) shall be transferred to the Department of Commerce, Year 2000 Reserve Fund, to cover the costs of the year 2000 conversion in Highway Fund agencies during the 1997-99 fiscal biennium. If funds are not available for this purpose, the Director of the Budget shall advance funds from the General Fund to cover any required expenditures until highway funds are available.

Section 3. The State Information Processing System may transfer up to fourteen million dollars (\$14,000,000) for the 1997-98 fiscal year from its receipts for testing and data processing service charges to the Department

of Commerce, Year 2000 Reserve Fund, to cover the costs of the year 2000 conversion.

Section 4. Beginning October 1, 1998, and quarterly thereafter, the Department of Commerce shall report to the Joint Legislative Commission on Governmental Operations and to the House and Senate Appropriations Subcommittees on Natural and Economic Resources on the status of the Year 2000 conversion, expenditure of funds from the Year 2000 Reserve Fund, and time lines and cost projections for full implementation of the Year 2000 conversion. The Director of the Budget shall report to the Joint Legislative Commission on Governmental Operations advancements made from the General Fund to cover expenditures required for year 2000 conversion in Highway Fund agencies.

Section 5. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 16th day of June, 1998.

Became law upon approval of the Governor at 4:50 p.m. on the 16th day of June, 1998.

S.B. 845

SESSION LAW 1998-10

AN ACT TO PERMIT THE STATE TO PROVIDE SCHOOL AND ACTIVITY BUSES FOR THE TRANSPORTATION NEEDS OF THE SPECIAL OLYMPICS.

The General Assembly of North Carolina enacts:

Section 1. Notwithstanding the provisions of G.S. 143-341(8)i. and G.S. 14-247, the Department of Administration may allow the 1999 Special Olympics World Summer Games Organizing Committee, Inc., to use State-owned trucks and vans for the 1999 Special Olympics World Summer Games in North Carolina.

The Department of Administration shall not charge any fees for the use of the vehicles for the 1999 Special Olympics World Summer Games.

The 1999 Special Olympics World Summer Games Organizing Committee, Inc., shall submit to the Department of Administration, for its approval, a list of the purposes for which the vehicles may be used. Vehicles may only be used for approved purposes.

The State shall incur no liability for any damages resulting from the use of vehicles under this provision. The 1999 Special Olympics World Summer Games Organizing Committee, Inc., shall carry liability insurance of not less than five million dollars (\$5,000,000) covering the use of the vehicles and shall be responsible for the full cost of repairs to these vehicles if they are damaged while used for the 1999 Special Olympics World Summer Games.

Section 2. Notwithstanding any other provisions of law, the Johnston County, Wake County, Orange County, and Durham County public school systems may permit, under terms and conditions set by the public school systems, the use and operation of public school buses and activity buses by the 1999 Special Olympics World Summer Games Organizing Committee, Inc., for the transportation of persons officially associated with the 1999

Special Olympics World Summer Games for the periods from May 28, 1998, through May 31, 1998, and from June 19, 1999, through July 10, 1999.

Section 3. The authorizations contained in Sections 1 and 2 of this act are effective only during the months of May, June, and July of 1998, and May, June, and July of 1999.

Section 4. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 8th day of June, 1998.

Became law upon approval of the Governor at 3:15 p.m. on the 17th day of June, 1998.

H.B. 1251

SESSION LAW 1998-11

AN ACT TO PROVIDE STAGGERED TERMS FOR THE BOARD OF COMMISSIONERS OF THE TOWN OF LITTLETON AND TO PROVIDE A FOUR-YEAR TERM FOR THE MAYOR.

The General Assembly of North Carolina enacts:

Section 1. Section 3 of the Charter of the Town of Littleton, being Section 3 of Chapter 171 of the Private Laws of 1893, as rewritten by Chapter 399 of the 1965 Session Laws, reads as rewritten:

"Sec. 3. ~~On Tuesday after the first Monday in May, 1967, and biennially thereafter, there shall be elected a Mayor and five (5) Commissioners for said town, who~~ In 1999 a Mayor shall be elected for a two-year term. In 2001 and quadrennially thereafter, a Mayor shall be elected for a four-year term. In 1999, five Commissioners shall be elected. The three Commissioners receiving the highest numbers of votes are elected to four-year terms, and the two Commissioners receiving the next highest numbers of votes are elected to two-year terms. In 2001 and quadrennially thereafter, two Commissioners are elected to four-year terms. In 2003 and quadrennially thereafter, three Commissioners are elected to four-year terms. They shall hold office until their successors are elected and qualified."

Section 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 22nd day of June, 1998.

Became law on the date it was ratified.

H.B. 1289

SESSION LAW 1998-12

AN ACT PERMITTING THE ROWAN-SALISBURY BOARD OF EDUCATION TO CONVEY TO THE ROWAN COUNTY VOCATIONAL WORKSHOP, INC., ITS REMAINING INTEREST IN THE PROPERTY PREVIOUSLY CONVEYED TO THAT ENTITY.

The General Assembly of North Carolina enacts:

Section 1. Chapter 212 of the 1973 Session Laws reads as rewritten:

"Section 1. The Salisbury City Board of Education is hereby authorized and empowered to convey any parcel or parcels of surplus real estate which it may now own to the Rowan County Vocational Workshop, Inc. ~~provided, however, that the deed conveying said land to the Rowan County Vocational Workshop, Inc., shall contain a reversionary or condition subsequent clause which shall provide, in effect, that the fee in the land shall revert to the Salisbury City Board of Education in the event the land is no longer used for the purposes for which the Rowan County Vocational Workshop, Inc., was established.~~ Inc.

Section 1.1. The Rowan-Salisbury Board of Education may convey to the Rowan County Vocational Workshop, Inc., for monetary and/or nonmonetary consideration, any remaining interest in property previously conveyed to the Rowan County Vocational Workshop, Inc., in accordance with Section 1 of this act.

Sec. 2. This act shall become effective July 1, 1973."

Section 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 22nd day of June, 1998.

Became law on the date it was ratified.

H.B. 1407

SESSION LAW 1998-13

AN ACT TO ALLOW THE TOWN OF NAGS HEAD TO ADOPT ORDINANCES REQUIRING SPRINKLER SYSTEMS IN CERTAIN BUILDINGS.

The General Assembly of North Carolina enacts:

Section 1. Notwithstanding any provision of the North Carolina State Building Code or any general or local law to the contrary, including Chapter 143 of the General Statutes, the Nags Head Board of Commissioners may require, by ordinance, the installation of sprinkler systems in the following buildings that are constructed within the corporate limits of the town or within the town's extraterritorial planning jurisdiction: (i) buildings that are greater than 50 feet in height, (ii) nonresidential buildings that contain at least 5,000 square feet of floor surface area, (iii) buildings that are designed for assembly occupancy, as defined in the North Carolina Building Code, that accommodate more than 50 people, and (iv) multifamily buildings that have three or more dwelling units. The installation of sprinkler systems shall be completed within a reasonable period of time, which shall be provided in any ordinances adopted by the Board. Any ordinances adopted pursuant to this act shall apply to existing buildings to the extent and under the circumstances that the provisions of the North Carolina State Building Code apply to preexisting buildings.

Section 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 22nd day of June, 1998.

Became law on the date it was ratified.

AN ACT TO MODIFY THE PURPOSES FOR WHICH DAVIE
OCCUPANCY TAX PROCEEDS MAY BE USED AND TO MAKE
TECHNICAL AND CONFORMING CHANGES TO THE LAW.

The General Assembly of North Carolina enacts:

Section 1. Section 1 of Chapter 928 of the 1989 Session Laws reads as rewritten:

"Section 1. Occupancy Davie County occupancy tax.

(a) *Authorization and Scope.* -- The Davie County Board of Commissioners may ~~by resolution, after not less than 10 days' public notice and after a public hearing held pursuant thereto,~~ levy a room occupancy tax of three percent (3%) of the gross receipts derived from the rental of any room, lodging, or similar accommodation furnished by a hotel, motel, inn, or similar place within the county that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations.

(b) ~~Collection.~~ Administration. -- A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 153A-155. The penalties provided in G.S. 153A-155 apply to a tax levied under this section.

~~Every operator of a business subject to the tax levied under this section shall, on and after the effective date of the levy of the tax, collect the tax. This tax shall be collected as part of the charge for furnishing a taxable accommodation. The tax shall be stated and charged separately from the sales records, and shall be paid by the purchaser to the operator of the business as trustee for and on account of the county. The tax shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the operator of the business. The county shall design, print, and furnish to all appropriate businesses and persons in the county the necessary forms for filing returns and instructions to ensure the full collection of the tax. An operator of a business who collects the occupancy tax levied under this section may deduct from the amount remitted to the county a discount of three percent (3%) of the amount collected.~~

~~(c) Administration. The county shall administer a tax levied under this section. A tax levied under this section is due and payable to the county tax administrator in monthly installments on or before the 15th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the 15th day of each month, prepare and render a return on a form prescribed by the county. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied.~~

~~A return filed with the county tax administrator under this section is not a public record as defined by G.S. 132-1 and may not be disclosed except as required by law.~~

~~(d) Penalties. A person, firm, corporation, or association who fails or refuses to file the return required by this section shall pay a penalty of ten~~

~~dollars (\$10.00) for each day's omission. In case of failure or refusal to file the return or pay the tax for a period of 30 days after the time required for filing the return or for paying the tax, there shall be an additional tax, as a penalty, of five percent (5%) of the tax due in addition to any other penalty, with an additional tax of five percent (5%) for each additional month or fraction thereof until the tax is paid. The board of commissioners may, for good cause shown, compromise or forgive the additional tax penalties imposed by this subsection.~~

~~Any person who willfully attempts in any manner to evade a tax imposed under this section or who willfully fails to pay the tax or make and file a return shall, in addition to all other penalties provided by law, be guilty of a misdemeanor and shall be punishable by a fine not to exceed one thousand dollars (\$1,000), imprisonment not to exceed six months, or both.~~

(e) ~~Distribution and use of tax revenue. --~~ Davie County shall, on a monthly basis, deposit in a special account ~~thirty-three and one-third percent (33-1/3%)~~ at least fifty percent (50%) of the net proceeds of the occupancy tax. Funds in the special account may be used only to promote travel and tourism in Davie County and to finance tourism related capital projects in the county. However, any tax proceeds in the special account that have not been appropriated after three years following the date they were deposited in the account shall be remitted to the general fund of Davie County and may be used for any lawful purpose.

~~Davie County shall, on a monthly basis, remit the remaining ~~sixty-six and two-thirds percent (66-2/3)~~ of the net proceeds of the tax to its general funds and may use these funds for any lawful purpose. As used in this subsection, "net proceeds" means gross proceeds, including penalties and interest, less the cost to the county of administering and collecting the tax, as determined by the finance office. The following definitions apply in this subsection:~~

- (1) Net proceeds. -- Gross proceeds less the cost to the county of administering and collecting the tax, as determined by the finance officer, not to exceed seven percent (7%) of the amount collected.
- (2) Promote travel and tourism. -- To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area; the term includes administrative expenses incurred in engaging in the listed activities.

~~(f) Effective date of levy. A tax levied under this section shall become effective on the date specified in the resolution levying the tax. That date must be the first day of a calendar month, however, and may not be earlier than the first day of the second month after the date the resolution is adopted.~~

~~(g) Repeal. A tax levied under this section may be repealed by a resolution adopted by the Davie County Board of Commissioners. Repeal of a tax levied under this section shall become effective on the first day of a month and may not become effective until the end of the fiscal year in which the repeal resolution was adopted. Repeal of a tax levied under this section does not affect a liability for a tax that was attached before the effective date~~

~~of the repeal, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal."~~

Section 2. County Administrative Provisions. Section 3(b) of S.L. 1997-102, as amended by Section 2 of S.L. 1997-255, Section 2 of S.L. 1997-342, Section 3 of S.L. 1997-364, and Section 6 of S.L. 1997-410, reads as rewritten:

"(b) This section applies only to Avery, Brunswick, Davie, Madison, Nash, Person, Randolph, and Scotland Counties."

Section 3. This act becomes effective July 1, 1998.

In the General Assembly read three times and ratified this the 23rd day of June, 1998.

Became law on the date it was ratified.

S.B. 1222

SESSION LAW 1998-15

**AN ACT TO TRANSFER THE AREA OF MECKLENBURG COUNTY
KNOWN AS MECK NECK TO IREDELL COUNTY.**

The General Assembly of North Carolina enacts:

Section 1. The boundary line between Iredell County and Mecklenburg County is hereby changed and relocated so as to divest Mecklenburg County of the territory described below, which territory shall vest in and become part of Iredell County:

That area commonly known as the Meck Neck, being all that land in Mecklenburg County which is connected by land to Iredell County and not connected by land to Mecklenburg County, and the area of Lake Norman in Mecklenburg County around such land, all as more particularly described as follows:

BEGINNING at Latitude 35° at 29.466" North and Longitude 80° at 56.597" West (the "present location of Fixed Lighted Marker D1" as established by the global positioning system, and being approximately .3 mile south of the southerly most point of the Meck Neck Land Area); thence in a northeasterly direction in a straight line which passes through Latitude 35° at 30.024" North and Longitude 80° at 55.736" West (the "present location of Fixed Lighted Marker D5" as established by the global positioning system) to a point in the Mecklenburg County-Iredell County line located near where the old channel of Reeds Creek intersects said line; thence in a westerly direction with the Mecklenburg County-Iredell County line to the point where said line intersects the Lincoln County line; thence in a southerly direction with the Mecklenburg County-Lincoln County line to a point where a straight line from the present location of Fixed Lighted Marker D5 to the present location of Fixed Lighted Marker D1 extended would intersect with the Mecklenburg County-Lincoln County line; thence in a northeasterly direction with said straight line from the present location of Fixed Lighted Marker D5 to the present location of Fixed Lighted Marker D1 extended to the Mecklenburg County-Lincoln County Line to the present location of Fixed Lighted Marker D1, the point or place of BEGINNING.

Section 2. (a) On and after July 1, 1998, all papers, documents, and instruments required or permitted to be filed or registered, involving

residents and property in the area described in Section 1 of this act, which previously would have been recorded in Mecklenburg County shall be recorded in Iredell County.

(b) All public records related to residents and property in the area described in Section 1 of this act which were filed or recorded prior to July 1, 1998, in Mecklenburg County, shall remain in Mecklenburg County where filed or recorded, and such records shall be valid public records as to the property and persons involved even though they are recorded in Mecklenburg County, a county where the property is no longer located.

(c) On and after July 1, 1998, all real and personal property in the area described in Section 1 of this act which was subject to ad valorem taxation in that area on January 1, 1998, shall be subject to ad valorem taxes in Iredell County for the fiscal year beginning July 1, 1998, to the same extent as it would have been had it been located in Iredell County on January 1, 1998, except as hereinafter provided with respect to classified registered motor vehicles. On July 1, 1998, the Mecklenburg County Tax Administrator shall transfer to the Iredell County Tax Assessor the ad valorem tax listings and valuations for all real and personal property subject to ad valorem taxation in the area described in Section 1 except classified motor vehicles which were registered in Mecklenburg County prior to July 1, 1998.

For the fiscal year which begins July 1, 1998, all real and personal property in the area described in Section 1 of this act which was subject to ad valorem taxation in that area on January 1, 1998, shall be assessed and taxed as follows:

- (1) The ad valorem property taxes assessed on all classified registered motor vehicles registered or listed between January 1, 1998, and June 30, 1998, shall be collected by the Mecklenburg County Tax Collector and all such taxes shall be retained by Mecklenburg County. The taxes on all classified registered motor vehicles registered after June 30, 1998, shall be assessed and collected by the Iredell County Tax Department.
- (2) The values established by the Mecklenburg County Tax Administrator on all personal property other than classified registered motor vehicles shall be used by the Iredell County Tax Assessor without adjustment in computing taxes due for the fiscal year beginning July 1, 1998. All such taxes shall be assessed and collected by the Iredell County Tax Department.
- (3) The values established by the Mecklenburg County Tax Administrator on all real property shall be reduced by the Iredell County Tax Assessor by applying the difference between one hundred percent (100%) of such values and the Iredell median ratio, as established by the Sales Assessment Ratio Study compiled by the North Carolina Department of Revenue as of January 1, 1998. The taxes determined by applying this method will be collected and retained by the Iredell County Tax Collector.
- (4) Beginning January 1, 1999, all property in the area described in Section 1 which is subject to ad valorem taxation shall be listed,

assessed, and taxed by Iredell County in the same manner as is prescribed by law for all other property located in Iredell County.

- (5) The final tax values of property subject to ad valorem taxation in the area described in Section 1 as of January 1, 1998, shall be determined by the Mecklenburg County Tax Administrator or the Mecklenburg County Board of Equalization and Review. Appeals to the North Carolina Property Tax Commission or to the courts shall be defended by Mecklenburg County, and Iredell County shall reimburse Mecklenburg County for all costs and expenses, including attorneys' fees, incurred in connection with such appeals.
- (6) Any unpaid taxes or tax liens for the fiscal year ending June 30, 1998, or for prior years on property subject to taxation in the area described in Section 1 of this act shall continue to be valid and enforceable by Mecklenburg County, including the foreclosure remedies provided for in G.S. 105-374 and G.S. 105-375, and the remedies of attachment and garnishment provided for in G.S. 105-366 through G.S. 105-368. Mecklenburg County shall supply Iredell County with a list of unpaid taxes as of July 1, 1998. Any such taxes collected by Iredell County shall be promptly paid to Mecklenburg County including accrued interest.

(d) On July 1, 1998, Iredell County shall become fully responsible for completing the Street Assessment Program begun by Mecklenburg County pursuant to authority granted to counties by Article 9 of Chapter 153A of the General Statutes to improve Blarney Road and Gainswood Drive to meet the State's requirements for adding such roads to the State Secondary Road System, said roads being located within the area described in Section 1 of this act. To the extent not already completed by July 1, 1998, Iredell County shall become responsible for preparing the Preliminary Assessment Roll, conducting the hearing on the Preliminary Assessment Roll Resolution, adopting the Final Assessment Roll Resolution, publishing the Notice of Confirmation of the Assessment Roll, and collecting the unpaid assessments. Should Mecklenburg County have paid the Department of Transportation for the improvement work performed on said roads before the date that the area described in Section 1 of this act is transferred to Iredell County, Iredell County will reimburse Mecklenburg County for said cost, to the extent not reimbursed by the property owners, within 90 days of said transfer of the area described in Section 1 of this act to Iredell County.

(e) No cause of action, including criminal actions, involving persons or property in that area described in Section 1 of this act which is pending on July 1, 1998, shall be abated, and such actions shall continue in Mecklenburg County.

(f) The Board of Elections of Mecklenburg County shall immediately after July 1, 1998, transfer the voter registration records pertaining to persons residing in the area described in Section 1 of this act to the Iredell County Board of Elections, and thereafter the registered voters so transferred shall be validly registered to vote in Iredell County.

(g) The Jury Commission of each county shall revise its jury lists to add to or eliminate therefrom those persons subject to jury duty who reside

in the area described in Section 1 of this act, said revised jury lists to be effective July 1, 1998.

(h) The area described in Section 1 of this act shall be transferred into Superior Court District 22, District Court District 22, and Prosecutorial District 22. The area described in Section 1 of this act shall remain in the same Congressional District, the same State House of Representatives District, and the same State Senate District.

Section 3. The Meck Neck Transfer Joint Undertaking Agreement made as of November 18, 1997, by and between Iredell County and Mecklenburg County is ratified.

Section 4. Iredell County shall pay, on behalf of residents of the Meck Neck, all tuition charges which might have been imposed by the Iredell County Board of Education on children living in the Meck Neck who attended schools operated by the Iredell County Board of Education prior to July 1, 1998.

Section 5. Any child who was a resident of the area annexed by Section 1 of this act on its date of ratification and who was a student in the Charlotte-Mecklenburg school system during the 1997-98 school year, and the siblings of any such person, may attend school in the Charlotte-Mecklenburg school system without necessity of a release or payment of tuition. Such student, while attending the Charlotte-Mecklenburg school system, shall be considered a resident of Mecklenburg County for all public school purposes, including transportation, athletics, and funding formulas. Notice must be given to both school systems by the parent or guardian in order to exercise the privilege granted by this section.

Section 6. This act becomes effective July 1, 1998.

In the General Assembly read three times and ratified this the 24th day of June, 1998.

Became law on the date it was ratified.

H.B. 989

SESSION LAW 1998-16

AN ACT TO REMOVE THE FEE FOR THE SCHOOL ADMINISTRATORS' EXAM.

The General Assembly of North Carolina enacts:

Section 1. G.S. 115C-290.5(a) reads as rewritten:

"(a) The Standards Board shall administer this Article. In fulfilling this duty, the Standards Board shall:

- (1) In accordance with subsection (c) of this section, develop and implement a North Carolina Public School Administrator Exam, based on the professional standards established by the Standards Board.
- (2) Establish and collect an application fee not to exceed fifty dollars (\$50.00). ~~(\$50.00), and an exam fee not to exceed one hundred fifty dollars (\$150.00).~~ Fees collected under this Article shall be credited to the General Fund as nontax revenue.

- (3) Review the educational achievements of an applicant to take the exam to determine whether the achievements meet the requirements set by G.S. 115C-290.7.
- (4) Notify the State Board of Education of the names and addresses of the persons who passed the exam and are thereby recommended to be certified as public school administrators by the State Board of Education.
- (5) Maintain accounts and records in accordance with the Executive Budget Act, Article 1 of Chapter 143 of the General Statutes.
- (6) Adopt rules in accordance with Chapter 150B of the General Statutes to implement this Article.
- (7) Submit an annual report by December 1 of each year to the Joint Legislative Education Oversight Committee of its activities during the preceding year, together with any recommendations and findings regarding improvement of the profession of public school administration."

Section 2. G.S. 115C-290.7(a) reads as rewritten:

"(a) The Standards Board shall recommend for certification by the State Board an individual who submits a complete application to the Standards Board and satisfies all of the following requirements:

- (1) Pays the application fee established by the Standards Board.
- ~~(2) Pays the exam fee established by the Standards Board.~~
- (3) Has a bachelors degree from an accredited college or accredited university and (i) has a graduate degree from a public school administration program that meets the public school administrator program approval standards set by the State Board of Education, or (ii) has a masters degree from an accredited college or accredited university and has completed by December 31, 1999, a public school administration program that meets the public school administration approval standards set by the State Board of Education.
- (4) Passes the ~~exam~~ exam adopted by the State Board."

Section 3. This act is effective on and after January 1, 1998.

In the General Assembly read three times and ratified this the 16th day of June, 1998.

Became law upon approval of the Governor at 9:30 a.m. on the 25th day of June, 1998.

S.B. 1182

SESSION LAW 1998-17

AN ACT TO REPEAL THE SUNSET ON CHILD SUPPORT FEDERAL REQUIREMENTS IN ORDER TO AVOID LOSS OF FEDERAL FUNDS FOR THE 1998-99 FISCAL YEAR UNDER THE CHILD SUPPORT IV-D ENFORCEMENT PROGRAM AND UNDER THE TEMPORARY ASSISTANCE TO NEEDY FAMILIES FEDERAL BLOCK GRANT.

The General Assembly of North Carolina enacts:

Section 1. Section 11.3 of S.L. 1997-433 reads as rewritten:

"Section 11.3. Except as otherwise provided in this act, this act becomes effective ~~October 1, 1997 and expires on June 30, 1998.~~ October 1, 1997."

Section 2. This act is effective June 30, 1998.

In the General Assembly read three times and ratified this the 25th day of June, 1998.

Became law upon approval of the Governor at 2:20 p.m. on the 25th day of June, 1998.

H.B. 1593

SESSION LAW 1998-18

AN ACT TO EXEMPT ALLEGHANY COUNTY AND THE TOWN OF SPARTA FROM CERTAIN LAWS RELATED TO THE CONSTRUCTION, PROCUREMENT, AND LEASING OF CRITICAL INFRASTRUCTURE NEEDS.

The General Assembly of North Carolina enacts:

Section 1. Alleghany County and the Town of Sparta may contract for the construction, procurement, and leasing of critical infrastructure needs including an electrical power substation and water and sewer line extensions related to the construction and operation of a new manufacturing plant currently under construction and scheduled for operation by September, 1998. These contracts may be negotiated and signed without being subject to the requirements of G.S. 143-128, 143-129, 143-131, and 143-132. Construction of the water and sewer line extensions using force account qualified labor on the permanent payroll of the agency concerned may be undertaken without respect to the limitations contained in G.S. 143-135.

Section 2. This act is effective when it becomes law and expires on July 1, 1999.

In the General Assembly read three times and ratified this the 29th day of June, 1998.

Became law on the date it was ratified.

H.B. 1505

SESSION LAW 1998-19

AN ACT TO PROVIDE FOR THE USE OF FUNDS APPROPRIATED FOR THE NORTH CAROLINA INDIAN CULTURAL CENTER AND TO ADD A SEAT ON THE BOARD OF THE NORTH CAROLINA INDIAN CULTURAL CENTER FOR A REPRESENTATIVE OF THE INDIANS OF PERSON COUNTY.

The General Assembly of North Carolina enacts:

Section 1. Section 33(a) of Chapter 561 of the 1993 Session Laws, as amended by Section 27.7 of S.L. 1997-443, reads as rewritten:

"(a) Of the funds appropriated from the General Fund to the Department of Administration, the sum of seven hundred fifty thousand dollars (\$750,000) for the 1993-94 fiscal year shall be used for ~~the purchase of land as necessary, an environmental study, and design as necessary,~~ development of the North Carolina Indian Cultural Center in Robeson

County. Up to one hundred fifty thousand dollars (\$150,000) of these funds may be used by the North Carolina Indian Cultural Center, Inc., for administrative and operating expenses. The remaining funds shall revert on June 30, ~~1998~~, 1999."

Section 2. Subsection (b) of Section 2 of Chapter 41 of the 1997 Session Laws reads as rewritten:

"(b) The Board of the North Carolina Indian Cultural Center, Inc., shall consist of ~~15~~ 16 members, appointed as follows:

- (1) One member representing each of the following Indian groups recognized by the State of North Carolina: the Coharie of Sampson and Harnett Counties; the Eastern Band of Cherokees; the Haliwa of Halifax, Warren, and adjoining counties; the Lumbees of Robeson, Hoke, and Scotland Counties; the Meherrin of Hertford County; the Indians of Person County; and the Waccamaw-Siouan from Columbus and Bladen Counties;
- (2) One member each from the following Indian organizations: the Cumberland County Association for Indian People, the Guilford Native Americans, and the Metrolina Native Americans;
- (3) One member representing the education community of the State;
- (4) Two members representing the business community of the State;
- (5) Two members representing the government of the State of North Carolina; and
- (6) One member representing the federal government.

Each member designated in subdivisions (1) and (2) above shall be appointed by the North Carolina Commission of Indian Affairs from two prioritized nominations submitted by the group or organization to be represented by that member. Each member designated in subdivisions (3) through (6) above shall be appointed by the North Carolina Commission of Indian Affairs from two prioritized nominations submitted by the Board of the North Carolina Indian Cultural Center, Inc. If the nominating group or organization submits only one nomination or fails to submit nominations for any reason within 30 days after the date designated for submission by the Commission, the Commission shall appoint a member of its choice to fill the requirement. The Board of the North Carolina Indian Cultural Center, Inc., shall appoint a chair from the Board membership.

Members shall serve two-year terms, except that the initial terms of:

- (1) The members representing the Coharie of Sampson and Harnett Counties, the Eastern Band of Cherokees, the Indians of Person County; and the Meherrin of Hertford County; the member representing the Metrolina Native Americans; the member representing the education community of the State; one member representing the government of the State of North Carolina; and one member representing the ~~federal government~~ business community shall be for one year; and
- (2) The members representing the Haliwa of Halifax, Warren, and adjoining counties, the Lumbees of Robeson, Hoke, and Scotland Counties, and the Waccamaw-Siouan from Columbus and Bladen Counties; the members representing the Cumberland County Association for Indian People and the Guilford Native Americans;

~~the one~~ member representing the business community of the State; one member representing the government of the State of North Carolina; and one member representing the federal government shall be for two years."

Section 3. In order to provide for appropriate staggering of terms, the term of the member added to the Board of the North Carolina Indian Cultural Center, Inc., pursuant to Section 2 of this act to represent the Indians of Person County shall run concurrently with the terms of the members whose initial terms were for one year.

Section 4. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 29th day of June, 1998.

Became law upon approval of the Governor at 1:04 p.m. on the 30th day of June, 1998.

S.B. 321

SESSION LAW 1998-20

AN ACT TO CLARIFY AND MODIFY A 1994 ACT CONCERNING THE LEASE OF PROPERTY BY THE GOLDSBORO-WAYNE AIRPORT AUTHORITY.

The General Assembly of North Carolina enacts:

Section 1. Chapter 711 of the 1993 Session Laws is repealed.

Section 2. Section 8(c) of Chapter 927 of the 1963 Session Laws, as amended by Chapter 1006 of the 1987 Session Laws, reads as rewritten:

"(c) To lease real or personal property under the supervision of or administered by the Authority, without the joinder in the lease agreements of the owning municipalities, units of local government, to wit, the County of Wayne and the City of Goldsboro) for a term not to exceed 20 years, and for purposes Goldsboro, for purposes that the board considers advantageous or conducive to the development of the Airport and that are not inconsistent with the grants and agreements under which the said Airport is held by said owning municipalities, real or personal property under the supervision of or administered by the said Authority, the owning units of local government. The term of a lease to the City of Goldsboro, Wayne County, or Wayne Community College may not exceed 50 years. The term of a lease to any other lessee may not exceed 20 years."

Section 3. Section 12 of Chapter 927 of the 1963 Session Laws, as amended by Chapter 1006 of the 1987 Session Laws, is further amended by deleting the phrase "20 years" and substituting the phrase "the maximum term provided in Section 8 of this act".

Section 4. This act is effective on and after July 7, 1994.

In the General Assembly read three times and ratified this the 30th day of June, 1998.

Became law on the date it was ratified.

S.B. 1466

SESSION LAW 1998-21

AN ACT TO ALLOW THE EASTERN BAND OF CHEROKEE INDIANS TO PERFORM BUILDING INSPECTIONS ON TRIBAL LANDS.

The General Assembly of North Carolina enacts:

Section 1. Article 18 of Chapter 153A of the General Statutes is amended by adding a new section to read:

"§ 153A-350.1. Tribal lands.

(a) As used in this Part, the term:

(1) 'County' or 'counties' also means a federally recognized Indian Tribe, and as to such tribe includes lands held in trust for the tribe.

(2) 'Board of commissioners' includes the Tribal Council of such tribe.

(b) This act applies only to Cherokee, Graham, Haywood, Jackson, and Swain Counties."

Section 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 30th day of June, 1998.

Became law on the date it was ratified.

S.B. 1327

SESSION LAW 1998-22

AN ACT TO PRESERVE THE TAX-EXEMPT STATUS FOR PIPED NATURAL GAS SOLD BY MUNICIPALITIES, TO MAKE THE TAXES ON OTHER SALES OF PIPED NATURAL GAS MORE UNIFORM, TO ADJUST THE CITIES' DISTRIBUTION OF THE TAX PROCEEDS UNTIL JUNE 30, 2000, TO DIRECT THE REVENUE LAWS STUDY COMMITTEE TO DETERMINE THE IMPACT OF THE TAX ON THE DISTRIBUTION TO CITIES, AND TO DIRECT THE UTILITIES COMMISSION TO STUDY THE ISSUE OF TRANSPORTATION RATES.

The General Assembly of North Carolina enacts:

Section 1. Chapter 105 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 5E.

"Piped Natural Gas Tax.

"§ 105-187.40. Definitions.

The definitions in G.S. 105-228.90 and the following definitions apply in this Article:

(1) Gas city. -- A city in this State that operated a piped natural gas distribution system as of July 1, 1998. These cities are Bessemer City, Greenville, Kings Mountain, Lexington, Monroe, Rocky Mount, Shelby, and Wilson.

(2) Local distribution company. -- A natural gas company to whom the North Carolina Utilities Commission has issued a franchise

under Chapter 62 of the General Statutes to serve an area of this State.

- (3) Premises. -- Defined in G.S. 62-110.2. When applying the definition of premises to this Article, electric service is to be construed as piped natural gas service.
- (4) Sales customer. -- An end-user who does not have direct access to an interstate gas pipeline and whose piped natural gas is delivered by the seller of the gas.
- (5) Transportation customer. -- An end-user who does not have direct access to an interstate gas pipeline and whose piped natural gas is delivered by a person who is not the seller of the gas.

"§ 105-187.41. Tax imposed on piped natural gas.

(a) Scope. -- An excise tax is imposed on piped natural gas received for consumption in this State. This tax is imposed in lieu of a sales and use tax and a percentage gross receipts tax on piped natural gas.

(b) Rate. -- The tax rate is set in the table below. The tax rate is based on monthly therm volumes of piped natural gas received by the end-user of the gas. If an end-user receives piped natural gas that is metered through two or more separate measuring devices, the tax is calculated separately on the volume metered through each device rather than on the total volume metered through all measuring devices, unless the devices are located on the same premises and are part of the same billing account. In that circumstance, the tax is calculated on the total volume metered through the two or more separate measuring devices.

<u>Monthly Volume of</u> <u>Therms Received</u>	<u>Rate Per Therm</u>
First 200	\$.047
201 to 15,000	.035
15,001 to 60,000	.024
60,001 to 500,000	.015
Over 500,000	.003

(c) Gas City Exemption. -- The tax imposed by this section does not apply to piped natural gas received by a gas city for consumption by that city or to piped natural gas delivered by a gas city to a sales or transportation customer of the gas city.

"§ 105-187.42. Liability for the tax.

The excise tax imposed by this section on piped natural gas is payable as follows:

- (1) For piped natural gas delivered by a local distribution company to a sales or transportation customer, the tax is payable by the local distribution company.
- (2) For piped natural gas delivered by a person who is not a local distribution company to a sales or transportation customer, the tax is payable by that person.
- (3) For piped natural gas received by a person by means of direct access to an interstate gas pipeline for consumption by that person, the tax is payable by that person.

"§ 105-187.43. Payment of the tax.

(a) Monthly Return. -- The tax imposed by this Article is payable monthly to the Secretary. A monthly tax payment is due by the last day of the month that follows the month in which the tax accrues. The tax imposed by this Article on piped natural gas delivered to a sales or transportation customer accrues when the gas is delivered. The tax payable on piped natural gas received by a person who has direct access to an interstate pipeline for consumption by that person accrues when the gas is received.

(b) Small Underpayments. -- A person is not subject to interest on or penalties for an underpayment of a monthly amount due if the person timely pays at least ninety-five percent (95%) of the amount due and includes the underpayment with the next return the person files.

"§ 105-187.44. Distribution of part of tax proceeds to cities.

(a) City Information. -- A monthly return filed under this Article must indicate the amount of tax attributable to the following: if a tax return does not state this information, the Secretary must determine how much of the tax proceeds are to be attributed to each city:

- (1) Piped natural gas delivered during the month to sales or transportation customers in each city in the State.
- (2) Piped natural gas received during the month in each city in the State by persons who have direct access to an interstate gas pipeline and who receive the gas for their own consumption.

(b) Distribution. -- Within 75 days after the end of each calendar quarter, the Secretary must distribute to the cities part of the tax proceeds collected under this Article during that quarter. The amount to be distributed to a city is one-half of the amount of tax attributable to that city for that quarter under subsection (a) of this section.

"§ 105-187.45. Information exchange and information returns.

(a) Utilities Information. -- The North Carolina Utilities Commission or the Public Staff of that Commission must give the Secretary a list of the entities that receive piped natural gas from an interstate pipeline and any other information available to the Commission that the Secretary asks for in administering the tax imposed by this Article.

(b) Information Return. -- The Secretary may require the operator of an interstate pipeline to report the amount of piped natural gas taken from the pipeline in this State, the persons that received the gas, and the volume received by each person.

"§ 105-187.46. Records and audits.

(a) Records. -- A person who is required to file a return under this Article must keep a record of all documents used to determine information provided in the return. The records must be kept for three years after the due date of the return to which the records apply.

(b) Audits. -- The Secretary may audit a person who is required to file a return under this Article."

Section 2. G.S. 105-116 reads as rewritten:

"§ 105-116. Franchise or privilege tax on electric power, ~~natural gas,~~ water, and sewerage companies.

(a) Tax. -- An annual franchise or privilege tax is imposed on the following:

- (1) An electric power company engaged in the business of furnishing electricity, electric lights, current, or power.
- (2) ~~A natural gas company engaged in the business of furnishing piped natural gas.~~
- (2a) ~~A regional natural gas district created under Article 28 of Chapter 160A of the General Statutes.~~
- (3) A water company engaged in owning or operating a water system subject to regulation by the North Carolina Utilities Commission.
- (4) A public sewerage company engaged in owning or operating a public sewerage system.

The tax on an electric power company is three and twenty-two hundredths percent (3.22%) of the company's taxable gross receipts from the business of furnishing electricity, electric lights, current, or power. ~~The tax on a natural gas company is three and twenty-two hundredths percent (3.22%) of the company's taxable gross receipts from the business of furnishing piped natural gas.~~ The tax on a regional natural gas district is three and twenty-two hundredths percent (3.22%) of the district's taxable gross receipts from the furnishing of piped natural gas. The tax on a water company is four percent (4%) of the company's taxable gross receipts from owning or operating a water system subject to regulation by the North Carolina Utilities Commission. The tax on a public sewerage company is six percent (6%) of the company's taxable gross receipts from owning or operating a public sewerage company. A company's taxable gross receipts are its gross receipts from business inside the State less the amount of gross receipts from sales reported under subdivision (b)(2). A company that engages in more than one business taxed under this section shall pay tax on each business. A company is allowed a credit against the tax imposed by this section for the company's investments in certain entities in accordance with Division V of Article 4 of this Chapter.

(b) Report and Payment. -- The tax imposed by this section is payable monthly or quarterly as specified in this subsection. A report is due quarterly. ~~An electric power company, a natural gas company, or a regional natural gas district~~ company shall pay tax monthly. A monthly tax payment is due by the last day of the month that follows the month in which the tax accrues, except the payment for tax that accrues in May. The payment for tax that accrues in May is due by June 25. A taxpayer is not subject to interest on or penalties for an underpayment of a monthly amount due if the taxpayer timely pays at least ninety-five percent (95%) of the amount due and includes the underpayment with the next report the company files. A water company or a public sewerage company shall pay tax quarterly when filing a report.

A quarterly report covers a calendar quarter and is due by the last day of the month that follows the quarter covered by the report. A taxpayer shall submit a report on a form provided by the Secretary. The report shall include the taxpayer's gross receipts from all property it owned or operated during the reporting period in connection with its business taxed under this section and shall contain the following information:

- (1) The taxpayer's gross receipts for the reporting period from business inside and outside this State, stated separately.

- (2) The taxpayer's gross receipts from commodities or services described in subsection (a) that are sold to a vendee subject to the tax levied by this section or to a joint agency established under ~~G.S. Chapter 159B~~ Chapter 159B of the General Statutes or a city having an ownership share in a project established under that Chapter.
- (3) The amount of and price paid by the taxpayer for commodities or services described in subsection (a) that are purchased from others engaged in business in this State and the name of each vendor.
- (4) For an electric power company, ~~a natural gas company, or a regional natural gas district, company~~ the entity's gross receipts from the sale within each city of the commodities and services described in subsection (a).

A taxpayer shall must report its gross receipts on an accrual basis. If a taxpayer's report does not state the taxpayer's taxable gross receipts derived within a city, the Secretary must determine a practical method of allocating part of the taxpayer's taxable gross receipts to the city.

~~(c) Gas Special Charges. -- Gross receipts of a natural gas company do not include the following:~~

- ~~(1) Special charges collected within this State by the company pursuant to drilling and exploration surcharges approved by the North Carolina Utilities Commission, if the surcharges are segregated from the other receipts of the company and are devoted to drilling, exploration, and other means to acquire additional supplies of natural gas for the account of natural gas customers in North Carolina and the beneficial interest in the surcharge collections is preserved for the natural gas customers paying the surcharges under rules established by the Commission.~~
- ~~(2) Natural gas expansion surcharges imposed under G.S. 62-158.~~

(d) Distribution. -- Part of the taxes imposed by this section on electric power companies, natural gas companies, and regional natural gas districts is distributed to cities under G.S. 105-116.1.

(e) Local Tax. -- So long as there is a distribution to cities from the tax imposed by this section, no city shall impose or collect any greater franchise, privilege or license taxes, in the aggregate, on the businesses taxed under this section, than was imposed and collected on or before January 1, 1947. ~~If any municipality shall have collected any privilege, license or franchise tax between January 1, 1947, and April 1, 1949, in excess of the tax collected by it prior to January 1, 1947, then upon distribution of the taxes imposed by this section to municipalities, the amount distributable to any municipality shall be credited with such excess payment.~~

~~(f) Gas City Exemption. -- The tax imposed by this section does not apply to the following cities that operate their own piped natural gas systems: Bessemer City, Kings Mountain, Lexington, Shelby, Greenville, Monroe, Rocky Mount, and Wilson."~~

Section 3. G.S. 105-116.1 reads as rewritten:

"§ 105-116.1. *Distribution of gross receipts taxes to cities.*

(a) Definitions. -- The following definitions apply in this section:

- (1) Freeze deduction. -- The amount by which the percentage distribution amount of a city was required to be reduced in fiscal year 1995-96 in determining the amount to distribute to the city.
- (2) Percentage distribution amount. -- Three and nine hundredths percent (3.09%) of the gross receipts derived by an electric power company, ~~a natural gas company, a regional natural gas district,~~ company and a telephone company from sales within a city that are taxable under G.S. 105-116 or G.S. 105-120.

(b) Distribution. -- The Secretary must distribute to the cities part of the taxes collected under this Article on electric power ~~companies, natural gas companies, regional natural gas districts,~~ companies and telephone companies. Each city's share for a calendar quarter is the percentage distribution amount for that city for that quarter minus one-fourth of the city's hold-back amount and one-fourth of the city's proportionate share of the annual cost to the Department of administering the distribution. The Secretary must make the distribution within 75 days after the end of each calendar quarter.

(c) Limited Hold-Harmless Adjustment. -- The hold-back amount for a city that, in the 1995-96 fiscal year, received from gross receipts taxes less than ninety-five percent (95%) of the amount it received in the 1990-91 fiscal year is the amount determined by the following calculation:

- (1) Adjust the city's 1995-96 distribution by adding the city's freeze deduction to the amount distributed to the city for that year.
- (2) Compare the adjusted 1995-96 amount with the city's 1990-91 distribution.
- (3) If the adjusted 1995-96 amount is less than or equal to the city's 1990-91 distribution, the hold-back amount for the city is zero.
- (4) If the adjusted 1995-96 amount is more than the city's 1990-91 distribution, the hold-back amount for the city is the city's freeze deduction minus the difference between the city's 1990-91 distribution and the city's 1995-96 distribution.

(d) Allocation of Hold-Harmless Adjustment. -- The hold-back amount for a city that, in the 1995-96 fiscal year, received from gross receipts taxes at least ninety-five percent (95%) of the amount it received in the 1990-91 fiscal year is the amount determined by the following calculation:

- (1) Determine the amount by which the freeze deduction is reduced for all cities whose hold-back amount is determined under subsection (c) of this section. This amount is the total hold-harmless adjustment.
- (2) Determine the amount of gross receipts taxes that would be distributed for the quarter to cities whose hold-back amount is determined under this subsection if these cities received their percentage distribution amount minus one-fourth of their freeze deduction.
- (3) For each city included in the calculation in subdivision (2) of this subsection, determine that city's percentage share of the amount determined under that subdivision.

- (4) Add to the city's freeze deduction an amount equal to the city's percentage share under subdivision (3) of this subsection multiplied by the total hold-harmless adjustment."

Section 4. G.S. 105-164.3(25) reads as rewritten:

"(25) 'Utility' means an electric power company, ~~a gas company, a regional natural gas district, company~~ or a telephone company that is subject to a privilege tax based on gross receipts under G.S. 105-116 or 105-120, a business entity that provides local, toll, or private telecommunications service as defined by G.S. ~~105-120(e)~~ 105-120(e), or a municipality that sells electric power, other than a municipality whose only wholesale supplier of electric power is a federal agency and who is required by a contract with that federal agency to make payments in lieu of taxes."

Section 5. G.S. 105-164.4(a) reads as rewritten:

"(a) A privilege tax is imposed on a retailer at the following percentage rates of the retailer's net taxable sales or gross receipts, as appropriate. The general rate of tax is four percent (4%).

- (1) The general rate of tax applies to the sales price of each item or article of tangible personal property that is sold at retail and is not subject to tax under another subdivision in this section.
- (1a) The rate of two percent (2%) applies to the sales price of each manufactured home sold at retail, including all accessories attached to the manufactured home when it is delivered to the purchaser. The maximum tax is three hundred dollars (\$300.00) per article. Each section of a manufactured home that is transported separately to the site where it is to be erected is a separate article.
- (1b) The rate of three percent (3%) applies to the sales price of each aircraft, boat, railway car, or locomotive sold at retail, including all accessories attached to the item when it is delivered to the purchaser. The maximum tax is one thousand five hundred dollars (\$1,500) per article.
- (1c) The rate of one percent (1%) applies to the sales price of the following articles:
 - a. Horses or mules by whomsoever sold.
 - b. Semen to be used in the artificial insemination of animals.
 - c. Sales of fuel, other than ~~electricity or piped natural gas,~~ electricity, to farmers to be used by them for any farm purposes other than preparing food, heating ~~dwelling~~ dwellings, and other household purposes. The quantity of fuel purchased or used at any one time shall not in any manner be a determinative factor as to whether any sale or use of fuel is or is not subject to the one percent (1%) rate of tax imposed ~~herein, by this subdivision.~~
 - d. Sales of fuel, other than ~~electricity or piped natural gas,~~ electricity, to manufacturing industries and manufacturing plants for use in connection with the operation of such industries and plants other than sales of fuels to be used for

residential heating purposes. The quantity of fuel purchased or used at any one time shall not in any manner be a determinative factor as to whether any sale or use of fuel is or is not subject to the rate of tax provided in this subdivision.

- e. Sales of fuel, other than ~~electricity or piped natural gas, electricity~~, to commercial laundries or to pressing and dry-cleaning establishments for use in machinery used in the direct performance of the laundering or the pressing and cleaning service.
 - f. Sales to freezer locker plants of wrapping paper, cartons and supplies consumed directly in the operation of such plant.
- (1d) The rate of one percent (1%) applies to the sales price of the following articles. The maximum tax is eighty dollars (\$80.00) per article.
- a. Sales to a farmer of machines and machinery, and parts and accessories for these machines and machinery, for use by the farmer in the planting, cultivating, harvesting, or curing of farm crops or in the production of dairy products, eggs, or animals. A 'farmer' includes a dairy operator, a poultry farmer, an egg producer, a livestock farmer, a farmer of crops, and a farmer of an aquatic species, as defined in G.S. 106-758. Items that are exempt from tax under G.S. 105-164.13(4c) are not subject to tax under this section.

The term 'machines and machinery' as used in this subdivision is defined as follows:

The term shall include all vehicular implements, designed and sold for any use defined in this subdivision, which are operated, drawn or propelled by motor or animal power, but shall not include vehicular implements which are operated wholly by hand, and shall not include any motor vehicles required to be registered under Chapter 20 of the General Statutes.

The term shall include all nonvehicular implements and mechanical devices designed and sold for any use defined in this subdivision, which have moving parts, or which require the use of any motor or animal power, fuel, or electricity in their operation but shall not include nonvehicular implements which have no moving parts and are operated wholly by hand.

The term shall also include metal flues sold for use in curing tobacco, whether such flues are attached to handfired furnaces or used in connection with mechanical burners.

- b. Sales of mill machinery or mill machinery parts and accessories to manufacturing industries and plants, and sales to contractors and subcontractors purchasing mill machinery or mill machinery parts and accessories for use by them in the performance of contracts with manufacturing industries and plants, and sales to subcontractors purchasing mill machinery or mill machinery parts and accessories for use by them in the performance of contracts with general contractors

who have contracts with manufacturing industries and plants. As used in this paragraph, the term 'manufacturing industries and plants' does not include delicatessens, cafes, cafeterias, restaurants, and other similar retailers that are principally engaged in the retail sale of foods prepared by them for consumption on or off their premises.

- c. Sales of central office equipment and switchboard and private branch exchange equipment to telephone companies regularly engaged in providing telephone service to subscribers on a commercial basis, and sales to these companies of prewritten computer programs used in providing telephone service to their subscribers.
 - d. Sales to commercial laundries or to pressing and dry cleaning establishments of machinery used in the direct performance of the laundering or the pressing and cleaning service and of parts and accessories thereto.
 - e. Sales to freezer locker plants of machinery used in the direct operation of said freezer locker plant and of parts and accessories thereto.
 - f. Sales of broadcasting equipment and parts and accessories thereto and towers to commercial radio and television companies which are under the regulation and supervision of the Federal Communications Commission.
 - g. Sales to farmers of bulk tobacco barns and racks and all parts and accessories thereto and similar apparatus used for the curing and drying of any farm produce.
 - h. Sales to farmers of grain, feed or soybean storage facilities and accessories thereto, whether or not dryers are attached, and all similar apparatus and accessories thereto for the storage of grain, feed or soybeans.
 - i. Sales of containers to farmers or producers for use in the planting, producing, harvesting, curing, marketing, packaging, sale, or transporting or delivery of their products when such containers do not go with and become part of the sale of their products at wholesale or retail.
- (1e) The rate of three percent (3%) applies to the sales price of each mobile classroom or mobile office sold at retail, including all accessories attached to the mobile classroom or mobile office when it is delivered to the purchaser. The maximum tax is one thousand five hundred dollars (\$1,500) per article. Each section of a mobile classroom or mobile office that is transported separately to the site where it is to be placed is a separate article.
- (1f) The rate of two and eighty-three-hundredths percent (2.83%) applies to the sales price of electricity ~~and piped natural gas~~ described in this subdivision and measured by a separate meter or another separate device:
- a. Sales of electricity ~~and piped natural gas~~ to farmers to be used by them for any farm purposes other than preparing food, heating dwellings, and other household purposes. The

quantity of electricity or gas purchased or used at any one time shall not be a determinative factor as to whether its sale or use is or is not subject to the rate of tax provided in this subdivision.

- b. Sales of electricity ~~and piped natural gas~~ to manufacturing industries and manufacturing plants for use in connection with the operation of the industries and plants other than sales of electricity ~~and gas~~ to be used for residential heating purposes. The quantity of electricity ~~or gas~~ purchased or used at any one time shall not be a determinative factor as to whether its sale or use is or is not subject to the rate of tax provided in this subdivision.
 - c. Sales of electricity ~~and piped natural gas~~ to commercial laundries or to pressing and dry-cleaning establishments for use in machinery used in the direct performance of the laundering or the pressing and cleaning service.
- (2) The applicable percentage rate applies to the gross receipts derived from the lease or rental of tangible personal property by a person who is engaged in the business of leasing or renting tangible personal property, or is a retailer and leases or rents property of the type sold by the retailer. The applicable percentage rate is the rate and the maximum tax, if any, that applies to a sale of the property that is leased or rented. A person who leases or rents property shall also collect the tax imposed by this section on the separate retail sale of the property.
- (3) Operators of hotels, motels, tourist homes, tourist camps, and similar type businesses and persons who rent private residences and cottages to transients are considered retailers under this Article. A tax at the general rate of tax is levied on the gross receipts derived by these retailers from the rental of any rooms, lodgings, or accommodations furnished to transients for a consideration. This tax does not apply to any private residence or cottage that is rented for less than 15 days in a calendar year or to any room, lodging, or accommodation supplied to the same person for a period of 90 or more continuous days.

As used in this subdivision, the term 'persons who rent to transients' means (i) owners of private residences and cottages who rent to transients and (ii) rental agents, including 'real estate brokers' as defined in G.S. 93A-2, who rent private residences and cottages to transients on behalf of the owners. If a rental agent is liable for the tax imposed by this subdivision, the owner is not liable.

- (4) Every person engaged in the business of operating a dry cleaning, pressing, or hat-blocking establishment, a laundry, or any similar business, engaged in the business of renting clean linen or towels or wearing apparel, or any similar business, or engaged in the business of soliciting cleaning, pressing, hat blocking, laundering or linen rental business for any of these businesses, is considered a retailer under this Article. A tax at

the general rate of tax is levied on the gross receipts derived by these retailers from services rendered in engaging in any of the occupations or businesses named in this subdivision. The tax imposed by this subdivision does not apply to receipts derived from coin or token-operated washing machines, extractors, and dryers. The tax imposed by this subdivision does not apply to gross receipts derived from services performed for resale by a retailer that pays the tax on the total gross receipts derived from the services.

- (4a) The rate of three percent (3%) applies to the gross receipts derived by a utility from sales of ~~electricity, piped natural gas, electricity~~ or local telecommunications service as defined by G.S. 105-120(e), other than sales of ~~electricity or piped natural gas~~ subject to tax under another subdivision in this section. ~~Gross receipts from sales of piped natural gas shall not include natural gas expansion surcharges imposed under G.S. 62-158.~~ A person who operates a utility is considered a retailer under this Article.
- (4b) A person who sells tangible personal property at a flea market, other than the person's own household personal property, is considered a retailer under this Article. A tax at the general rate of tax is levied on the sales price of each article sold by the retailer at the flea market. A person who leases or rents space to others at a flea market may not lease or rent this space unless the retailer requesting to rent or lease the space shows the license or a copy of the license required by this Article or other evidence of compliance. A person who leases or rents space at a flea market shall keep records of retailers who have leased or rented space at the flea market. As used in this subdivision, the term 'flea market' means a place where space is rented to a person for the purpose of selling tangible personal property.
- (4c) The rate of six and one-half percent (6 1/2%) applies to the gross receipts derived from providing toll telecommunications services or private telecommunications services as defined by G.S. 105-120(e) that both originate from and terminate in the State and are not subject to the privilege tax under G.S. 105-120. Any business entity that provides these services is considered a retailer under this Article. This subdivision does not apply to telephone membership corporations as described in Chapter 117 of the General Statutes.
- (5) **(Effective until July 1, 1998)** The rate of three percent (3%) applies to the sales price of food that is not otherwise exempt pursuant to G.S. 105-164.13 but would be exempt pursuant to G.S. 105-164.13 if it were purchased with coupons issued under the Food Stamp Program, 7 U.S.C. § 51.
- (5) **(Effective July 1, 1998)** The rate of two percent (2%) applies to the sales price of food that is not otherwise exempt pursuant to G.S. 105-164.13 but would be exempt pursuant to G.S. 105-164.13 if it were purchased with coupons issued under the Food Stamp Program, 7 U.S.C. § 51."

Section 6. G.S. 105-164.13 is amended by adding a new subdivision to read:

"(44) Piped natural gas. -- This item is exempt because it is taxed under Article 5E of this Chapter."

Section 7. G.S. 105-164.20 reads as rewritten:

"§ 105-164.20. Cash or accrual basis of reporting."

Any retailer, except a utility, ~~taxable under this Article having both cash and credit sales~~ may report such sales on either the cash or accrual basis of accounting upon making application to the Secretary for permission to use ~~such the basis of reporting under such rules and regulations as shall be promulgated from time to time by the Secretary. Such permission shall continue in force and effect unless revoked by the Secretary but he may grant written permission to any such taxpayer upon application therefor to change from one basis to another under such rules and regulations. A utility shall selected. Permission granted by the Secretary to report on a selected basis continues in effect until revoked by the Secretary or the taxpayer receives permission from the Secretary to change the basis selected. A utility must~~ report its sales on an accrual basis. A sale by a utility of electricity, piped natural gas, electricity or intrastate telephone service is considered to accrue when the utility bills its customer for the sale."

Section 8. G.S. 105-122(d) reads as rewritten:

"(d) After determining the proportion of its total capital stock, surplus and undivided profits as set out in subsection (c) of this section, which amount so determined shall in no case be less than fifty-five percent (55%) of the appraised value as determined for ad valorem taxation of all the real and tangible personal property in this State of each such corporation plus the total appraised value of intangible property returned for taxation of intangible personal property as herein specified nor less than its total actual investment in tangible property in this State, every corporation taxed under this section shall annually pay to the Secretary of Revenue, at the time the report and statement are due, a franchise or privilege tax, which is hereby levied at the rate of one dollar and fifty cents (\$1.50) per one thousand dollars (\$1,000) of the total amount of capital stock, surplus and undivided profits as herein provided. The tax imposed in this section shall in no case be less than thirty-five dollars (\$35.00) and shall be for the privilege of carrying on, doing business, and/or the continuance of articles of incorporation or domestication of each such corporation in this State. Appraised value of tangible property including real estate shall be the ad valorem valuation for the calendar year next preceding the due date of the franchise tax return. Appraised value of intangible property shall be the total gross valuation required to be reported for intangible tax purposes on April 15 coincident with or next preceding the due date of the franchise tax return. The term "total actual investment in tangible property" as used in this section shall be construed to mean the total original purchase price or consideration to the reporting taxpayer of its tangible properties, including real estate, in this State plus additions and improvements thereto less reserve for depreciation as permitted for income tax purposes, and also less any indebtedness incurred and existing by virtue of the purchase of any real estate and any permanent improvements made thereon. In computing "total actual

investment in tangible personal property" there shall also be deducted reserves for the entire cost of any air-cleaning device or sewage or waste treatment plant, including waste lagoons, and pollution abatement equipment purchased or constructed and installed which reduces the amount of air or water pollution resulting from the emission of air contaminants or the discharge of sewage and industrial wastes or other polluting materials or substances into the outdoor atmosphere or into streams, lakes, or rivers, upon condition that the corporation claiming such deduction shall furnish to the Secretary a certificate from the Department of Environment and Natural Resources or from a local air pollution control program for air-cleaning devices located in an area where the Environmental Management Commission has certified a local air pollution control program pursuant to G.S. 143-215.112 certifying that said Department or local air pollution control program has found as a fact that the air-cleaning device, waste treatment plant or pollution abatement equipment purchased or constructed and installed as above described has actually been constructed and installed and that such device, plant or equipment complies with the requirements of the Environmental Management Commission or local air pollution control program with respect to such devices, plants or equipment, that such device, plant or equipment is being effectively operated in accordance with the terms and conditions set forth in the permit, certificate of approval, or other document of approval issued by the Environmental Management Commission or local air pollution control program and that the primary purpose thereof is to reduce air or water pollution resulting from the emission of air contaminants or the discharge of sewage and waste and not merely incidental to other purposes and functions. The cost of constructing facilities of any private or public utility built for the purpose of providing sewer service to residential and outlying areas shall be treated as deductible for the purposes of this section; the deductible liability allowed by this section shall apply only with respect to such pollution abatement plants or equipment constructed or installed on or after January 1, 1955.

~~In determining the total tax payable by any corporation under this section, there shall be allowed as a credit on such tax the amount of the credit authorized by Division V of Article 4 of this Chapter."~~

Section 9. G.S. 105-122 is amended by adding a new subsection to read:

"(d1) Credits. -- A corporation is allowed the following credits against the tax imposed by this section for a taxable year:

- (1) The credit claimed for the taxable year under Division V of Article 4 of this Chapter.
- (2) One-half of the amount of tax payable during the taxable year under Article 5E of this Chapter."

Section 10. G.S. 105-259(b)(5b) reads as rewritten:

"(5b) To furnish to the finance officials of a city a list of the utility taxable gross receipts that were derived from sales within the city and used to determine the city's distribution and piped natural gas tax revenues attributable to the city under G.S. 105-116.1 or and G.S. 105-187.44 or under former distribution under G.S. 105-116 and G.S. 105-120."

Section 11. G.S. 105-259(b) is amended by adding a new subdivision to read:

"(21) To exchange information concerning the tax on piped natural gas imposed by Article 5E of this Chapter with the North Carolina Utilities Commission or the Public Staff of that Commission."

Section 12. G.S. 160A-211 is amended by adding a new subsection to read:

"(c) Piped Gas Restriction. -- A city may not levy a privilege license tax on a person who is engaged in the business of supplying piped natural gas and is subject to tax under Article 5E of Chapter 105 of the General Statutes."

Section 13. Notwithstanding G.S. 105-164.4 and G.S. 105-164.6, sales and use tax levied under Article 5 of Chapter 105 of the General Statutes does not apply to piped natural gas sold by a person that is not subject to franchise tax under G.S. 105-116.

Section 14. (a) Notwithstanding G.S. 105-187.44(b), as enacted by this act, the amount distributed to a city under G.S. 105-187.44(b) for taxes collected for each of the quarters in the fiscal year 1999-2000 may not exceed its benchmark amount until each city receives an amount equal to its benchmark amount. Each quarter, the Secretary of Revenue shall determine a city's benchmark amount and the amount it would receive under G.S. 105-187.44(b) if not for the redistribution required by this section. The Secretary shall identify those cities whose distribution amounts under G.S. 105-187.44(b) are less than their benchmark amounts and shall determine the total dollar amount of the shortfall. The Secretary shall reduce the amount to be distributed to those cities whose distribution amount under G.S. 105-187.44(b) exceeds their benchmark amount by the total dollar amount of the shortfall determined for that quarter in proportion to each city's excess. However, in no event may a city's distribution amount be reduced below its benchmark amount. The Secretary will redistribute these monies to the cities whose distribution amounts under G.S. 105-187.44(b) are less than their benchmark amounts in proportion to each city's shortfall. In any quarter that a city does not have a prior year's distribution for the corresponding quarter in fiscal year 1998-99, that city is excluded from the redistribution required under this section for that quarter. In that case, the city will receive the amount it is entitled to receive under G.S. 105-187.44(b), as enacted by this act.

For the purposes of this subsection, the term "benchmark amount" means the amount a city received under G.S. 105-116.1 attributable to piped natural gas for the corresponding quarter during the fiscal year 1998-99.

(b) The Department of Revenue must calculate the amount a city received for taxes collected for each of the first three quarters in fiscal year 1998-99 under G.S. 105-116.1 that was attributable to piped natural gas. The Department must also calculate the amount each city would have received under G.S. 105-187.44(b), as enacted by this act, for taxes collected for each of the first three quarters in fiscal year 1999-2000. The Department shall give this information to the Revenue Laws Study Committee. The Revenue Laws Study Committee shall study the impact of

this act on the distribution of part of the proceeds of the excise tax on piped natural gas to the cities and report its findings, and any recommendation, to the 2000 Session of the 1999 General Assembly.

Section 15. The Utilities Commission shall study the transportation rates charged by the local distribution companies to transport piped natural gas from the interstate pipeline to the consumer.

Section 16. The provisions of this act are severable. If any provision of this act is held invalid by a court of competent jurisdiction, the invalidity does not affect other provisions of the act that can be given effect without the invalid provision.

Section 17. Sections 1 through 12 of this act become effective July 1, 1999, and apply to piped natural gas delivered on or after that date. Section 13 of this act becomes effective July 1, 1998. The remainder of this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 30th day of June, 1998.

Became law upon approval of the Governor at 7:03 p.m. on the 30th day of June, 1998.

S.B. 620

SESSION LAW 1998-23

AN ACT TO AUTHORIZE THE DIRECTOR OF THE BUDGET TO CONTINUE EXPENDITURES FOR THE OPERATION OF GOVERNMENT AT THE LEVEL IN EFFECT ON JUNE 30, 1998, AND TO EXTEND CERTAIN EXPIRING PROVISIONS OF LAW.

The General Assembly of North Carolina enacts:

BUDGET CONTINUATION

Section 1. The Director of the Budget shall allocate funds for expenditure for current operations by State departments, institutions, and agencies, as provided in S.L. 1997-443 and as otherwise provided by law. The Director of the Budget shall not allocate funds for any of the purposes set out in the proposed base budget reductions submitted to the Regular 1998 Session of the General Assembly by the Governor.

Vacant positions subject to the proposed base budget cuts shall not be filled. State employees in positions subject to the proposed base budget cuts and State employees in positions funded with nonrecurring funds for the 1997-98 fiscal year shall be given 30 days' notice of termination.

There is appropriated from the appropriate State funds and cash balances, federal receipts, and departmental receipts for the 1998-99 fiscal year funds necessary to carry out the provisions of this act.

The appropriations and the authorizations to spend funds in this section shall remain in effect until the Current Operations Appropriations and Capital Improvement Appropriations Act of 1998 becomes a law, at which time that act shall become effective and shall govern appropriations and expenditures. When the Current Operations Appropriations and Capital Improvement Appropriations Act of 1998 becomes a law, the Director of the Budget shall adjust allocations to give effect to that act from July 1, 1998.

BLOCK GRANT PROVISIONS

Section 2. The Director of the Budget shall continue to allocate federal block grant funds at the levels provided as provided in Sections 5 and 5.1 of S.L. 1997-443 and as otherwise provided by law.

EMPLOYEE SALARIES

Section 3. The salary schedules and specific salaries established for fiscal year 1997-98 in S.L. 1997-443 for offices and positions shall remain in effect until the effective date of the Current Operations Appropriations and Capital Improvement Appropriations Act of 1998.

Teachers and other employees shall not move up on these salary schedules or receive automatic, annual, performance, merit, or other increments or bonuses until authorized by the General Assembly.

CASH FLOW HIGHWAY FUND AND HIGHWAY TRUST FUND APPROPRIATIONS

Section 4. Section 32.13 of S.L. 1997-443 reads as rewritten:

"Section 32.13. The General Assembly authorizes and certifies anticipated revenues of the Highway Fund as follows:

FY 1999-2000	\$1,182.2	\$1,190.8 million
FY 2000-2001	\$1,211.2	\$1,225.7 million
FY 2001-2002	\$1,241.2	\$1,265.4 million
FY 2002-2003	\$1,271.9	\$1,301.0 million

The General Assembly authorizes and certifies anticipated revenues of the Highway Trust Fund as follows:

FY 1999-2000	\$861.7	\$871.4 million
FY 2000-2001	\$891.0	\$901.8 million
FY 2001-2002	\$921.6	\$934.7 million
FY 2002-2003	\$953.3	\$967.2 million."

ALLOCATIONS FOR PUBLIC SCHOOLS

Section 5. (a) There is allocated from unexpended 1997-98 General Fund appropriations the sum of fifty-five million twenty-seven thousand six hundred eighty dollars (\$55,027,680) which shall not revert and shall be used as follows:

- (1) \$17,118,003 to fulfill the State's obligations to public school employees who qualified for performance bonuses for the 1997-98 school year under the ABC's of Public Education Program;
 - (2) \$9,010,274 to fulfill the State's obligations to public school teachers who qualified for longevity payments for the 1997-98 school year;
 - (3) \$24,199,403 to permit the State Board of Education to order school buses needed for the 1998-99 school year; and
 - (4) \$4,700,000 for the State School Technology Fund to provide additional school technology funds prior to the beginning of the 1998-99 school year.
- (b) This section becomes effective June 30, 1998.

FUNDS TO IMPLEMENT THE ABC'S OF PUBLIC EDUCATION PROGRAM

Section 6. (a) Section 8.36(a) of S.L. 1997-443 reads as rewritten:

"(a) Of the funds appropriated to State Aid to Local School Administrative Units, the State Board of Education ~~may use up to seventy-two million four hundred thousand dollars (\$72,400,000) for the 1997-98 fiscal year to~~ shall provide incentive funding for schools that meet or exceed the projected levels of improvement in student performance, in accordance with the ABC's of Public Education Program. In accordance with State Board of Education policy, incentive awards in schools that achieve higher than expected improvements may be up to: (i) one thousand five hundred dollars (\$1,500) for each teacher and for certified personnel; and (ii) five hundred dollars (\$500.00) for each teacher assistant. In accordance with State Board of Education policy, incentive awards in schools that meet the expected improvements may be up to: (i) seven hundred fifty dollars (\$750.00) for each teacher and for certified personnel; and (ii) three hundred seventy-five dollars (\$375.00) for each teacher assistant."

(b) This section becomes effective June 30, 1998.

OUTDOOR ADVERTISING JUST COMPENSATION SUNSET EXTENDED

Section 7. (a) Section 2 of Chapter 1147 of the 1981 Session Laws, as amended by all of the following:

Chapter 318 of the 1983 Session Laws

Chapter 1024 of the 1987 Session Laws

Section 1 of Chapter 166 of the 1989 Session Laws

Section 1 of Chapter 725 of the 1993 Session Laws

reads as rewritten:

"Sec. 2. This act is effective upon ratification, but shall expire ~~June 30, 1998,~~ when the Current Operations Appropriations and Capital Improvement Appropriations Act of 1998 becomes a law and shall have no force or effect after that date."

(b) This section becomes effective June 30, 1998.

EXTEND THE DEADLINE FOR MATCHING COMMUNITY COLLEGE BOND FUNDS

Section 8. (a) Section 6(b)IV of Chapter 542 of the 1993 Session Laws, as added by Section 4 of Chapter 515 of the 1995 Session Laws, reads as rewritten:

"IV. If the State Board of Community Colleges determines that a community college has not met the matching requirements of G.S. 115D-31(a)(1) by July 1, ~~1998,~~ 1999, with respect to a capital improvement project for which bond proceeds are allocated in subdivision I or pursuant to subdivision II of this subsection, the Board shall certify that fact to the State Treasurer by October 1, ~~1998,~~ 1999. All of these bond proceeds with respect to which the Board certifies that the matching requirement has not been met by July 1, ~~1998,~~ 1999, shall be placed by the State Treasurer in a special account within the Community Colleges Bond Fund and shall be used for making grants to community colleges. Bond proceeds in the

special account shall be allocated among the community colleges in accordance with the following conditions:

- (1) The State Board of Community Colleges shall generate, by October 1, ~~1998~~, 1999, a priority ranking of legitimate community college capital improvement needs using a formula based on objective meaningful factors relevant to capital needs, including space to population ratio, population served ratio, capacity enrollment ratio, local to State and vocational education ratios, type of project, and readiness to implement.
- (2) The State Board of Community Colleges shall provide the State Treasurer a projected allocation of the proceeds in the special account in accordance with this priority ranking, except that:
 - a. No projected allocation shall be made for a community college that the Board certified in accordance with this subdivision IV had failed to meet a matching requirement.
 - b. No more than four million dollars (\$4,000,000) shall be allocated to a single community college.
 - c. Funds shall not be allocated for more than one project per community college.
- (3) The proceeds of grants made from bond proceeds in the special account shall be allocated and expended for paying the cost of community college capital improvements in accordance with this allocation by the State Board of Community Colleges, to the extent and as provided in this act. The Director of the Budget is empowered, when the Director of the Budget determines it is in the best interest of the State and the North Carolina Community College System to do so, and if the cost of a particular project is less than the projected allocation, to use the excess funds to increase the size of that project or increase the size of any other project itemized in this section, or to increase the amount allocated to a particular community college within the aggregate amount of funds available under this section. The Director of the Budget shall consult with the Advisory Budget Commission and the Joint Legislative Commission on Governmental Operations before making these changes."
- (b) This section becomes effective June 30, 1998, and expires when the Current Operations Appropriations and Capital Improvement Appropriations Act of 1998 becomes a law.

CONTINUE DRUG TREATMENT COURT/FUNDS DO NOT REVERT

Section 9. (a) Section 21.6(c) of Chapter 507 of the 1995 Session Laws reads as rewritten:

"(c) Subsection (a) of this section becomes effective July 1, 1995, and expires ~~June 30, 1998~~, when the Current Operations Appropriations and Capital Improvement Appropriations Act of 1998 becomes a law. The remainder of this section becomes effective October 1, 1995."

(b) Effective June 30, 1998, funds appropriated for the Drug Treatment Court shall not revert at the end of the 1997-98 fiscal year.

TEEN COURT FUNDS DO NOT REVERT

Section 9.1. (a) The funds appropriated in S.L. 1997-443 to the Judicial Department for teen court programs throughout the State shall not revert at the end of the 1997-98 fiscal year and shall remain available to the Department for the 1998-99 fiscal year to be used for teen court programs.

(b) This section becomes effective June 30, 1998.

CUMBERLAND JUVENILE ASSESSMENT CENTER

Section 10. (a) Section 18.21 of S.L. 1997-443 reads as rewritten:

"Section 18.21. (a) Of the funds appropriated in this act to the Administrative Office of the Courts for the 1997-98 fiscal year, the sum of one hundred fifty thousand dollars (\$150,000) shall be used to fund the Juvenile Assessment Project authorized by this section. These funds shall be matched by local funds on the basis of one dollar (\$1.00) of local funds for every three dollars (\$3.00) of State funds. These funds shall not revert at the end of the 1997-98 fiscal year but shall remain in the Department during the 1998-99 fiscal year to implement this section.

(b) The Administrative Office of the Courts, in collaboration with the Chief Court Counselor of District Court District 12, the Cumberland County Department of Social Services, and the appropriate local school administrative units, shall develop and implement a Juvenile Assessment Center Project in District Court District 12 to operate from the effective date of this act to ~~June 30, 1998.~~ June 30, 1999. The purpose of the Project is to facilitate efficient prevention and intervention service delivery to juveniles who are (i) alleged to be delinquent or undisciplined and have been taken into custody or (ii) at risk of becoming delinquent or undisciplined because they have behavioral problems and have committed delinquent acts even though they have not been taken into custody. The Project shall assist these juveniles by providing a centralized point of intake and assessment for the juveniles, by addressing the educational, emotional, and physical needs of the juveniles, and by providing juveniles with an atmosphere for learning personal responsibility, self-respect, and respect for others. The Administrative Office of the Courts shall consider the recommendations of the Juvenile Assessment Advisory Board in developing and implementing the Project.

(c) The Project shall be modeled after the Juvenile Assessment Center in Hillsborough County, Florida, and shall:

- (1) Identify those juveniles who are alleged to be delinquent or undisciplined or are at risk of becoming delinquent or undisciplined;
- (2) Evaluate the educational, emotional, and physical needs of the juveniles identified and determine whether the juveniles have problems related to substance abuse, depression, or other emotional conditions;
- (3) Develop in-depth and comprehensive assessment plans for the juveniles identified that recommend appropriate treatment, counseling, and disposition of the juveniles; and
- (4) Provide services to juveniles identified and their families through collaboration with public and private resources, including local law

enforcement, parents' organizations, the Fayetteville Chamber of Commerce, and county and community programs and organizations that provide substance abuse treatment and child and family counseling.

(d) There is established the Juvenile Assessment Advisory Board to make recommendations to the Administrative Office of the Courts regarding the development and operations of the Project. The Board shall consist of 13 members, including:

- (1) The director of the Department of Social Services of Cumberland County, or the director's designee.
- (2) A representative from the local mental health area authority of Cumberland County.
- (3) A member of the Cumberland County Board of Education.
- (4) The sheriff of Cumberland County, or the sheriff's designee.
- (5) The chief of police of the Fayetteville Police Department, or the designee of the chief of police.
- (6) A judge of District Court District 12.
- (7) A juvenile court counselor from District Court District 12.
- (8) The director of the Guardian Ad Litem program in Cumberland County, or the director's designee.
- (9) The director of the Health Department of Cumberland County, or the director's designee.
- (10) Two public members appointed by the Fayetteville City Council.
- (11) Two public members appointed by the Board of County Commissioners of Cumberland County.

The members of the Board shall, within 30 days after the initial appointment is made, meet and elect one member as chair. The Board shall meet at least once a month at the call of the chair, and a quorum of the Board shall consist of a majority of its members. The Board of County Commissioners of Cumberland County shall provide necessary clerical and professional assistance to the Board.

Initial appointments shall be made by October 1, 1997, and all terms shall expire ~~June 30, 1998~~, June 30, 1999.

(e) The Administrative Office of the Courts, in consultation with the Department of ~~Human Resources~~, Health and Human Services, shall evaluate the Project and report to the Chairs of the House and Senate Appropriations Committees, the Chairs of the House and Senate Appropriations Subcommittees on Justice and Public Safety and ~~Human Resources~~, Health and Human Services, and the Fiscal Research Division of the General Assembly by ~~May 1, 1998~~, May 1, 1999, on the progress of the development and implementation of the Project. In the report, the Administrative Office of the Courts, in consultation with the Department of ~~Human Resources~~, Health and Human Services, shall evaluate the effectiveness of the Project, including the number of juveniles served or expected to be served, and shall recommend whether the Project should be continued. If the report recommends that the Project be continued, it shall also provide a cost analysis outlining the long-term staffing and operating needs of the Project."

(b) This section becomes effective June 30, 1998, and expires when the Current Operations Appropriations and Capital Improvement Appropriations Act of 1998 becomes a law.

EXTEND SUNSET ON BAD CHECK PROGRAM/FUNDS DO NOT REVERT

Section 11. (a) Subsection (e) of Section 18.22 of S.L. 1997-443 reads as rewritten:

"(e) ~~This act section becomes effective October 1, 1997, and expires June 30, 1998, when the Current Operations Appropriations and Capital Improvement Appropriations Act of 1998 becomes a law.~~"

(b) Effective June 30, 1998, funds appropriated for the bad check pilot program shall not revert at the end of the 1997-98 fiscal year.

DRIVERS EDUCATION FUNDS DO NOT REVERT

Section 12. (a) Funds appropriated for drivers education for the 1997-98 fiscal year but not expended for that purpose shall not revert at the end of the fiscal year. The State Board of Education may use these funds during the 1998-99 fiscal year for forms to implement S.L. 1997-507, AN ACT TO PROVIDE THAT CERTAIN STUDENTS WHO DROP OUT OF SCHOOL OR DO NOT MAKE PROGRESS TOWARD GRADUATION SHALL NOT BE ELIGIBLE FOR DRIVERS PERMITS OR LICENSES.

(b) This section becomes effective June 30, 1998, and expires when the Current Operations Appropriations and Capital Improvement Appropriations Act of 1998 becomes a law.

COMMUNITIES IN SCHOOLS FUNDS/DO NOT REVERT

Section 13. (a) Funds allocated to Communities in Schools of the Rocky Mount Region, Inc., for the 1997-98 fiscal year shall not revert at the end of the fiscal year but shall remain available for expenditure during the 1998-99 fiscal year.

(b) This section becomes effective June 30, 1998, and expires when the Current Operations Appropriations and Capital Improvement Appropriations Act of 1998 becomes a law.

LITIGATION RESERVE

Section 14. (a) Funds in the State Board of Education's Litigation Reserve that are not expended or encumbered on June 30, 1998, shall not revert on July 1, 1998, but shall remain available for expenditure until the Current Operations Appropriations and Capital Improvement Appropriations Act of 1998 becomes a law.

(b) Subsection (a) of this section becomes effective June 30, 1998, and expires when the Current Operations Appropriations and Capital Improvement Appropriations Act of 1998 becomes a law.

CORE SOUND MORATORIUM

Section 15. Section 3 of Chapter 547 of the 1995 Session Laws, Regular Session 1996, as amended by subsection (b) of Section 1 of Chapter 633 of the 1995 Session Laws, Regular Session 1996; Section 27.33 of

Chapter 18 of the 1996 Session Laws, Second Extra Session; Section 12 of S.L. 1997-256; Section 8 of S.L. 1997-347; and Section 6.14 of S.L. 1997-400, reads as rewritten:

"Sec. 3. Notwithstanding G.S. 113-202, a moratorium on new shellfish cultivation leases shall be imposed in the remaining area of Core Sound not described in Section 1 of this act. During the moratorium, a comprehensive study of the shellfish lease program shall be conducted. The moratorium established under this section covers that part of Core Sound bounded by a line beginning at a point on Cedar Island at 35°00'39"N - 76°17'48"W, thence 109°(M) to a point in Core Sound 35°00'00"N - 76°12'42"W, thence 229°(M) to Marker No. 37 located 0.9 miles off Bells Point at 34°43'30"N - 76°29'00"W, thence 207°(M) to the Cape Lookout Lighthouse at 34°37'24"N - 76°31'30"W, thence 12°(M) to a point at Marshallberg at 34°43'07"N - 76°31'12"W, thence following the shoreline in a northerly direction to the point of beginning except that the highway bridges at Salters Creek, Thorofare Bay, and the Rumley Bay ditch shall be considered shoreline. The moratorium shall expire 1 July 1998, when the Current Operations Appropriations and Capital Improvement Appropriations Act of 1998 becomes a law."

BEAVER DAMAGE CONTROL FUNDS

Section 16. (a) Subsection (h) of Section 69 of Chapter 1044 of the 1991 Session Laws, as amended by Section 111 of Chapter 561 of the 1993 Session Laws, Section 27.3 of Chapter 769 of the 1993 Session Laws, Section 26.6 of Chapter 507 of the 1995 Session Laws, Section 27.15 of Chapter 18 of the Session Laws of the 1996 Second Extra Session, and Section 15.44(b) of S.L. 1997-443, reads as rewritten:

"(h) Subsections (a) through (d) of this section expire June 30, 1998, when the Current Operations Appropriations and Capital Improvement Appropriations Act of 1998 becomes a law."

(b) This section becomes effective June 30, 1998.

YEAR 2000 RESERVE FUND

Section 17. (a) Section 1 of S.L. 1998-9 reads as rewritten:

"Section 1. There is appropriated from the General Fund to the Department of Commerce, Year 2000 Reserve Fund, the sum of twenty million five hundred six thousand three hundred sixty-seven dollars (\$20,506,367) for the 1997-98 fiscal year to cover the costs of the year 2000 conversion in General Fund and Highway Fund agencies during the 1997-99 fiscal biennium."

(b) This section becomes effective June 30, 1998.

Section 17A. There is appropriated from the General Fund for the 1998-99 fiscal year the following:

- (1) \$26,553,765 to the Department of Public Education for increases in average daily membership in public schools for 1998-99;
- (2) \$2,000,000 to the Department of Community Colleges for FTE students in the Community College System for 1998-99; and

- (3) \$13,730,338 to the UNC Board of Governors for increased enrollment.

DELAY RELEASE OF DMV RECORDS TO MARKETERS

Section 17.1. Notwithstanding any other provision of law, the Division of Motor Vehicles shall not disclose personal information in its records for purposes specified in 18 U.S.C. § 2721(b)(12) prior to July 1, 1999. This section shall not expire until July 1, 1999.

EXTEND SUNSET ON 1997 BOXING COMMISSION AMENDMENTS

Section 18. Section 9 of S.L. 1997-504 reads as rewritten:

"Section 9. Except as otherwise specified herein, this act is effective when it becomes law. This act expires ~~August 1, 1998.~~ October 1, 1998."

EFFECTIVE DATE

Section 19. Except as otherwise provided, this act becomes effective July 1, 1998, and expires on the effective date of the Current Operations Appropriations and Capital Improvement Appropriations Act of 1998.

In the General Assembly read three times and ratified this the 30th day of June, 1998.

Became law upon approval of the Governor at 4:30 p.m. on the 1st day of July, 1998.

S.B. 124

SESSION LAW 1998-24

AN ACT TO REDUCE THE WHITE GOODS DISPOSAL TAX RATE TO ONE RATE FOR ANY WHITE GOOD REGARDLESS OF WHETHER THE WHITE GOOD CONTAINS CHLOROFLUOROCARBONS, TO EXTEND THE WHITE GOODS DISPOSAL TAX SUNSET, TO ALTER THE DISTRIBUTION OF THE TAX PROCEEDS FROM THIS TAX, TO CLARIFY HOW THE COUNTIES MAY USE THE TAX PROCEEDS, AND TO LIMIT THE AMOUNT OF SURPLUS A COUNTY MAY ACCUMULATE BY HOLDING FURTHER TAX DISTRIBUTIONS UNTIL THE SURPLUS IS REDUCED.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-187.21 reads as rewritten:

"§ 105-187.21. *Tax imposed.*

A privilege tax is imposed on a white goods retailer at a flat rate for each new white good that is sold by the retailer. An excise tax is imposed on a new white good purchased outside the State for storage, use, or consumption in this State. The rate of the privilege tax and the excise tax is ~~five dollars (\$5.00) if the new white good does not contain chlorofluorocarbon refrigerants and is ten dollars (\$10.00) if the new white good contains chlorofluorocarbon refrigerants.~~ three dollars (\$3.00). These taxes are in addition to all other taxes."

Section 2. G.S. 105-187.24 reads as rewritten:

"§ 105-187.24. *Use of tax proceeds.*

The Secretary shall distribute the taxes collected under this Article, less the Department of Revenue's allowance for administrative expenses, in accordance with this section. The Secretary may retain the Department's cost of collection, not to exceed two hundred twenty-five thousand dollars (\$225,000) a year, as reimbursement to the Department.

Each quarter, the Secretary shall credit ~~five percent (5%)~~ eight percent (8%) of the net tax proceeds to the Solid Waste Management Trust Fund and shall credit twenty percent (20%) of the net tax proceeds to the White Goods Management Account. The Secretary shall distribute the remaining ~~seventy-five percent (75%)~~ seventy-two percent (72%) of the net tax proceeds among the counties on a per capita basis according to the most recent annual population estimates certified to the Secretary by the State Planning Officer. The Department shall not distribute the tax proceeds to a county when notified not to do so by the Department of Environment and Natural Resources under G.S. 130A-309.87. If a county is not entitled to a distribution, the proceeds allocated for that county will be credited to the White Goods Management Account.

A county may use funds distributed to it under this section only as provided in G.S. 130A-309.82. A county that receives funds under this section and that has an interlocal agreement with another unit of local government under which the other unit provides for the disposal of solid waste for the county must transfer the amount received under this section to that other unit. A unit to which funds are transferred is subject to the same restrictions on use of the funds as the county."

Section 3. G.S. 130A-309.12 reads as rewritten:

"§ 130A-309.12. *Solid Waste Management Trust Fund.*

(a) The Solid Waste Management Trust Fund is created and is to be administered by the Department for the purposes of:

- (1) Funding activities of the Department to promote waste reduction and recycling including but not limited to public education programs and technical assistance to units of local government;
- (2) Funding research on the solid waste stream in North Carolina;
- (3) Funding activities related to the development of secondary materials markets;
- (4) Providing funding for demonstration projects as provided by this Part; and
- (5) Providing funding for research by The University of North Carolina and independent nonprofit colleges and universities within the State which are accredited by the Southern Association of Colleges and Schools as provided by this Part.

(b) The Solid Waste Management Trust Fund shall consist of the following:

- (1) Funds appropriated by the General Assembly.
- (2) Contributions and grants from public or private sources.
- (3) Ten percent (10%) of the proceeds of the scrap tire disposal tax imposed under Article 5B of Chapter 105 of the General Statutes.
- (4) ~~Five percent (5%)~~ Eight percent (8%) of the proceeds of the white goods disposal tax imposed under Article 5C of Chapter 105 of the General Statutes.

(c) The Department shall report annually on or before 1 September to the Environmental Review Commission as to the condition of the Solid Waste Management Trust Fund and as to the use of all funds allocated from the Solid Waste Management Trust Fund."

Section 4. G.S. 130A-309.82 reads as rewritten:

"§ 130A-309.82. *Use of disposal tax proceeds by counties.*

Article 5C of Chapter 105 of the General Statutes imposes a tax on new white goods to provide funds for the management of discarded white goods. A county ~~may~~ must use the proceeds of the tax distributed to it under that Article ~~only~~ for the management of discarded white goods. The purposes for which a county may use the tax proceeds include, but are not limited to, the following:

- (1) Capital improvements for infrastructure to manage discarded white goods, such as concrete pads for loading, equipment essential for moving white goods, storage sheds for equipment essential to white goods disposal management, and freon extraction equipment.
- (2) Operating costs associated with managing discarded white goods, such as labor, transportation, and freon extraction.
- (3) The cleanup of illegal white goods disposal sites, the cleanup of illegal disposal sites consisting of more than fifty percent (50%) discarded white goods, and, as to those illegal disposal sites consisting of fifty percent (50%) or less discarded white goods, the cleanup of the discarded white goods portion of the illegal disposal sites.

Except as provided in subdivision (3) of this section, a county may not use the tax proceeds for a capital improvement or operating expense that does not directly relate to the management of discarded white goods. Except as provided in subdivision (3) of this section, if a capital improvement or operating expense is partially related to the management of discarded white goods, a county may use the tax proceeds to finance a percentage of the costs equal to the percentage of the use of the improvement or expense directly related to the management of discarded white goods."

Section 5. G.S. 130A-309.85 reads as rewritten:

"§ 130A-309.85. *Department to submit annual report on the management of white goods.*

The Department shall report annually to the Environmental Review Commission and to the Revenue Laws Study Committee concerning the management of white goods. The report shall be submitted by ~~1 October~~ February 1 of each year for the fiscal year ending on the preceding ~~30 June~~ June 30. The report shall include the following information:

- (1) The amount of taxes collected and distributed under G.S. 105-187.24 during the period covered by the report.
- (2) The cost to each county of managing white goods during the period covered by the report.
- (3) The beginning and ending balances of the White Goods Management Account for the period covered by the report and a list of grants made from the Account for the period.
- (4) Any other information the Department considers helpful in understanding the problem of managing white goods.

- (5) A summary of the information concerning the counties' white goods management programs contained in the counties' Annual Financial Information Report."

Section 6. Part 2D of Article 9 of Chapter 130A of the General Statutes is amended by adding a new section to read:

"§ 130A-309.87. Eligibility for disposal tax proceeds."

(a) Receipt of Funds. -- A county may not receive a quarterly distribution of the white goods disposal tax proceeds under G.S. 105-187.24 unless the undesignated balance in the county's white goods account at the end of its fiscal year is less than the threshold amount. Based upon the information in a county's Annual Financial Information Report, the Department must notify the Department of Revenue by March 1 of each year which counties may not receive a distribution of the white goods disposal tax for the current calendar year. The Department of Revenue will credit the undistributed tax proceeds to the White Goods Management Account.

If the undesignated balance in a county's white goods account subsequently falls below the threshold amount, the county may submit a statement to the Department, certified by the county finance officer, that the undesignated balance in its white goods account is less than the threshold amount. Upon receipt of the statement, the Department will notify the Department of Revenue to distribute to the county its quarterly distribution of the white goods disposal tax proceeds. The Department must notify the Department of Revenue of the county's change of status at least 30 days prior to the next quarterly distribution.

For the purposes of this subsection, the term "threshold amount" means twenty-five percent (25%) of the amount of white goods disposal tax proceeds a county received, or would have received if it had been eligible to receive them under G.S. 130A-309.87, during the preceding fiscal year.

(b) Annual Financial Information Report. -- On or before November 1 of each year, a county must submit a copy of its Annual Financial Information Report, prepared in accordance with G.S. 159-33.1, to the Department. The Secretary of the Local Government Commission must require the following information in that report:

- (1) The tonnage of white goods scrap metal collected.
- (2) The amount of revenue credited to its white goods account. This revenue should include all receipts derived from the white goods disposal tax, the sale of white goods scrap metals and freon, and a grant from the White Goods Management Account.
- (3) The expenditures from its white goods account. The expenditures should include operating expenses and capital improvement costs associated with its white goods management program.
- (4) The designated and undesignated balance of its white goods account.
- (5) A comparison of the undesignated balance of its white goods account at the end of the fiscal year and the amount of white goods disposal tax proceeds it received, or would have received if it had been eligible to receive it under G.S. 130A-309.87, during the fiscal year."

Section 7. Section 11 of Chapter 471 of the 1993 Session Laws, as amended by Section 15.1(b) of Chapter 769 of the 1993 Session Laws, reads as rewritten:

"Sec. 11. Sections 1 through 5 of this act and this section become effective January 1, 1994. Section 3 of this act expires July 1, ~~1998~~, 2001. Section 6 of this act becomes effective July 1, ~~1998~~, 2001. Sections 7, 8, and 9 of this act become effective July 1, ~~1999~~, 2002."

The repeal of the tax imposed by Section 3 of this act does not affect the rights or liabilities of the State, a taxpayer, or another person that arose during the time the tax was in effect. The first report submitted by the Department to the Environmental Review Commission under G.S. 130A-309.85, as enacted by this act, shall cover the period from January 1, 1994, to June 30, 1994."

Section 8. G.S. 130A-309.87(a), as enacted by this act, becomes effective January 1, 1999, and applies to collections made on or after that date. The remainder of this act becomes effective July 1, 1998.

In the General Assembly read three times and ratified this the 1st day of July, 1998.

Became law upon approval of the Governor at 5:00 p.m. on the 1st day of July, 1998.

H.B. 1274

SESSION LAW 1998-25

AN ACT TO ALLOW THE CITY OF GASTONIA TO WAIVE WATER AND SEWER SPECIAL ASSESSMENTS ON CERTAIN BENEFITED PROPERTY.

The General Assembly of North Carolina enacts:

Section 1. The City of Gastonia may waive existing confirmed water assessments, each being in the amount of eight hundred ninety dollars (\$890.00), and existing confirmed sewer assessments, each being in the amount of one thousand three hundred eighty-two dollars (\$1,382), on parcel numbers 17, 18, 19, and 20, Tax Book 10, Map 62B, as the same appear on file and of record in the Gaston County Register of Deeds Office.

Section 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 6th day of July, 1998.

Became law on the date it was ratified.

H.B. 1290

SESSION LAW 1998-26

AN ACT TO GRANT AUTHORITY TO THE TOWN OF WAYNESVILLE TO ADDRESS ABANDONED STRUCTURES IN THE SAME MANNER AS MUNICIPALITIES IN COUNTIES WITH A POPULATION OF OVER ONE HUNDRED SIXTY-THREE THOUSAND.

The General Assembly of North Carolina enacts:

Section 1. Section 2 of Chapter 733 of the 1995 Session Laws, as amended by S.L. 1997-101, S.L. 1997-414, and S.L. 1997- 449, reads as rewritten:

"Sec. 2. This act applies to the Cities of Greenville, Lumberton, and Roanoke Rapids, to the municipalities in Lee County, and the Towns of Bethel, Farmville, and ~~Newport~~ Newport, and Waynesville only."

Section 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 6th day of July, 1998.

Became law on the date it was ratified.

H.B. 1338

SESSION LAW 1998-27

AN ACT TO AUTHORIZE JACKSON COUNTY TO REGULATE THE OPERATION OF PERSONAL WATERCRAFT.

The General Assembly of North Carolina enacts:

Section 1. A county may adopt ordinances to regulate personal watercraft operation in lakes and other bodies of water within the county boundaries.

Section 2. This act applies only to Jackson County.

Section 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 6th day of July, 1998.

Became law on the date it was ratified.

H.B. 1556

SESSION LAW 1998-28

AN ACT TO EXTEND THE EXTRATERRITORIAL JURISDICTION OF THE CITY OF DUNN.

The General Assembly of North Carolina enacts:

Section 1. In addition to any areas where the City of Dunn exercises extraterritorial jurisdiction under Article 19 of Chapter 160A of the General Statutes, the City shall have extraterritorial jurisdiction under that Article in the following described area:

Beginning on the south side of Jonesboro Road and running southward along the western margin of Core Road (SR 1806) and intersecting with Highway 55 (SR 1819) crossing Highway 55 and running southward along the eastern margin of property owned by Douglas Parker to the Harnett County/Sampson County line. Following the Harnett County/Sampson County line southward and stopping at U.S. Highway 421.

Section 2. The provisions of G.S. 160A-360(f) shall apply to the area in Section 1 of this act.

Section 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 6th day of July, 1998.

Became law on the date it was ratified.

H.B. 1610

SESSION LAW 1998-29

AN ACT TO AUTHORIZE THE CITY OF NEW BERN TO CONVEY CERTAIN PROPERTY AT PRIVATE SALE.

The General Assembly of North Carolina enacts:

Section 1. Notwithstanding Article 12 of Chapter 160A of the General Statutes, the City of New Bern may convey to the New Bern Area Improvements Association, Inc. by private sale, with or without monetary consideration, any or all of its right, title, and interest in the following described property: The property at the corner of Cedar Street and Bern Street in the City of New Bern, known as the Cedar Street Recreation Center.

The New Bern Area Improvements Association, Inc. is the successor to the lessor of the facility who has leased the property and operated it as a community center for nearly 20 years.

Section 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 6th day of July, 1998.

Became law on the date it was ratified.

H.B. 1639

SESSION LAW 1998-30

AN ACT TO ALLOW THE TOWN OF NEWPORT TO LEASE A CERTAIN PIECE OF PROPERTY FOR TWENTY-FIVE YEARS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 160A-272 reads as rewritten:

"§ 160A-272. *Lease or rental of property.*

Any property owned by a city may be leased or rented for such terms and upon such conditions as the council may determine, but not for longer than ~~40 years~~ 25 years (except as otherwise provided herein) and only if the council determines that the property will not be needed by the city for the term of the lease. In determining the term of a proposed lease, periods that may be added to the original term by options to renew or extend shall be included. Property may be rented or leased only pursuant to a resolution of the council authorizing the execution of the lease or rental agreement adopted at a regular council meeting upon 10 days' public notice. Notice shall be given by publication describing the property to be leased or rented, stating the annual rental or lease payments, and announcing the council's intent to authorize the lease or rental at its next regular meeting.

No public notice need be given for resolutions authorizing leases or rentals for terms of one year or less, and the council may delegate to the city manager or some other city administrative officer authority to lease or rent city property for terms of one year or less. Leases for terms of more than ~~40 years~~ 25 years shall be treated as a sale of property and may be executed by following any of the procedures authorized for sale of real property."

Section 2. This act applies only to a lease by the Town of Newport of Tax Parcel 30634813147869 of the Carteret County Registry, a 1.17 acre tract located on Howard Boulevard known as the "Scout Hut".

Section 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 6th day of July, 1998.

Became law on the date it was ratified.

H.B. 1647

SESSION LAW 1998-31

AN ACT TO AMEND THE CHARTER OF THE CITY OF ASHEVILLE TO DELETE THE REQUIREMENT THAT COUNCIL MEETINGS BE HELD AT LEAST ONCE EACH WEEK AND TO CHANGE THE MANNER IN WHICH ORDINANCES ARE REVISED OR AMENDED.

The General Assembly of North Carolina enacts:

Section 1. Section 8 of the Charter of the City of Asheville, being Chapter 121 of the Private Laws of 1931, as amended by Section IV of Ordinance No. 1501 of the City of Asheville, adopted March 19, 1985, pursuant to Part 4 of Article 5 of Chapter 160A of the General Statutes, reads as rewritten:

"On its first regular meeting date in December following a regular municipal election, the council shall meet at the usual place for holding its meetings, and the newly elected mayor and councilmembers shall assume the duties of office. Before entering upon the duties of their offices, the newly elected mayor and councilmen shall severally make oath before the retiring mayor, city clerk or some person authorized by law to administer oaths to perform faithfully the duties of their respective offices. Thereafter the council shall meet at such times as may be prescribed by ordinance or ~~resolution, but not less frequently than once each week~~ resolution. Special meetings shall be called by the clerk upon written request of the mayor or of the city manager or of three members of the council. No less than 12 hours' notice of special meetings shall be given to each member of the council at such address, within the corporate limits of the City of Asheville, as he shall designate and such notice shall be published at least once prior to the meeting in a daily newspaper of the city. The notice must state the subject or subjects to be considered at the meeting and no other subject or subjects may be there considered."

Section 2. Section 18 of the Charter of the City of Asheville, being Chapter 121 of the Private Laws of 1931, reads as rewritten:

"No ordinance ~~or resolution~~ or section thereof shall be revised or amended except by a new ordinance ~~or resolution~~ containing the entire ~~ordinance, resolution~~ ordinance or section as revised or ~~amended and repealing the original ordinance, resolution or section~~ amended."

Section 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 6th day of July, 1998.

Became law on the date it was ratified.

AN ACT TO ADD CERTAIN DESCRIBED PROPERTY TO THE CORPORATE LIMITS OF THE TOWN OF FARMVILLE AND TO EXTEND THE TERMS OF THE MAYOR AND BOARD OF COMMISSIONERS OF THE TOWN OF LEGGETT FROM TWO TO FOUR YEARS.

The General Assembly of North Carolina enacts:

Section 1. The following described property is added to the corporate limits of the Town of Farmville:

BEING a portion of Greenfield Heights Subdivision in Farmville Township, Pitt County, North Carolina, and bounded on the south by the northern line of US Highway 264 Alternate, on the west by Henry L. Smith, on the north by R. K. Britt heirs, and on the east by Carolyn D. Mewborn, and being more particularly described as follows:

BEGINNING at a concrete monument marking the southwest corner of Greenfield Heights Subdivision, said concrete monument being located *S 57-26-58 E 7201.223 feet from a bronze disk in a traffic island marking North Carolina Geodetic Survey Station "MARLBORO" having North Carolina Coordinate System Coordinates of $x = 2,418, 132.697$ feet, $y = 669,537.965$ feet, North American Datum of 1927, and running thence with the west line of Greenfield Heights and with Henry L. Smith's east line N 12-42-45 E 1011.355 feet to an iron pipe, a corner with the R. K. Britt heirs; thence with the said Britt heirs south line and along the north lines of lot 109 and lot 110 N 87-53-02 E 225.000 feet to an iron pipe; thence with the common line between lot 110 and lot 111 S 22-43-58 E 186.974 feet to an iron pipe in the north line of Brooks Drive; thence crossing Brooks Drive S 41-00-55 E 74.769 feet to the northeast corner of lot 73; thence with the east line of lot 73, S 11-26-43 W 197.970 feet to a point at the southeast corner of lot 73; thence with the east line of lot 76 and lot 77, S 24-20-07 W 235.066 feet to the southeast corner of lot 77; thence along the south line of lot 78, S 57-36-29 E 115.391 feet to the western line of a street; thence along the western line of said street N 36-47-45 E 105.680 feet; thence crossing said street S 56-56-15 E 60.127 feet to the northwest corner of lot 62; thence along the northern line of lot 62 S 56-56-15 E 175.000 feet; thence along the west line of lot 56, lot 55, lot 54, and lot 53, N 36-47-45 E 344.000 feet; thence along the west line of lot 52, N 27-00-45 E 86.300 feet; thence along the north line of lot 52, S 56-56-15 E 189.700 feet to a point in the west line of Shackelford Street; thence crossing said street S 56-56-09 E 60.122 feet to a point in the east line of said street; thence along the north line of lot 44 S 56-56-15 E 175.000 feet; thence along the west line of lots 28, 27, and 26, N 36-47-45 E 258.000 feet to the northwest corner of lot 26; thence along the west line of lot 25, N 54-03-45 E 108.000 feet; thence along the west line of lots 24 and 21, N 01-49-15 W 157.930 feet to the southern line of Brooks Drive; thence along the south line of Brooks Drive N 88-10-45 E 382.590 feet to the northeast corner of lot 19; thence along the east line of lot 19, S 01-49-15 E 163.860 feet to a point in the north line of lot 17; thence along the north line of lot

17 S 67-41-15 E 49.260 feet to a point in the west line of the Carolyn D. Mewborn tract; thence along the eastern line of Greenfield Heights and the west line of Carolyn D. Mewborn the following 6 courses: (1) S 36-43-00 W 916.838 feet to a corner of lot 9; (2) thence with lot 9, S 58-20-28 E 49.773 feet, (3) thence S 40-30-32 W 285.016 feet, (4) thence S 40-30-32 W 42.002 feet, (5) thence S 43-14-11 W 338.901 feet to a concrete monument, (6) thence S 49-13-04 W 97.908 feet to a concrete monument on the north line of US 264A; thence with the north line of US 264A along a curve whose chord bears N 52-34-01 W 169.830 feet to the intersection of the eastern line of Hagan Street with the north line of US 264A; thence with the north line of US 264A N 56-39-13 W 61.041 feet to the western line of Hagan Street; thence along the northern line of US 264A N 56-58-51 W 1015.451 feet to the point of beginning containing 37.74 acres, all according to a survey and plat by McDavid Associates, Inc. dated May 6, 1998, entitled "Annexation Survey Town of Farmville, Part of Greenfield Heights Subdivision."

Section 2. Section 3 of the Charter of the Town of Leggett, being Chapter 4 of the Local Laws of 1973, reads as rewritten:

"**Sec. 3.** The town shall be governed by a mayor and a board of commissioners who shall be elected from the town at large for terms of ~~two~~ four years. The powers and duties of the mayor shall be those conferred by law, together with such powers and duties as the board of commissioners may confer upon him pursuant to law. The government and general management of the town shall be vested in the board of commissioners."

Section 3. Section 1 of this act is effective when it becomes law. Section 2 of this act is effective for elections beginning with the next general election in November 1999.

In the General Assembly read three times and ratified this the 8th day of July, 1998.

Became law on the date it was ratified.

H.B. 1278

SESSION LAW 1998-33

AN ACT TO ALLOW CALDWELL, LENOIR, MITCHELL AND WAYNE COUNTIES TO ACQUIRE PROPERTY FOR USE BY THE COUNTY BOARDS OF EDUCATION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 153A-158.1 reads as rewritten:

"§ 153A-158.1. *Acquisition and improvement of school property in certain counties.*

(a) Acquisition by County. -- A county may acquire, by any lawful method, any interest in real or personal property for use by a school administrative unit within the county. In exercising the power of eminent domain a county shall use the procedures of Chapter 40A. The county shall use its authority under this subsection to acquire property for use by a school administrative unit within the county only upon the request of the board of education of that school administrative unit and after a public hearing.

(b) Construction or Improvement by County. -- A county may construct, equip, expand, improve, renovate, or otherwise make available property for use by a school administrative unit within the county. The local board of education shall be involved in the design, construction, equipping, expansion, improvement, or renovation of the property to the same extent as if the local board owned the property.

(c) Lease or Sale by Board of Education. -- Notwithstanding the provisions of G.S. 115C-518 and G.S. 160A-274, a local board of education may, in connection with additions, improvements, renovations, or repairs to all or part of any of its property, lease or sell the property to the board of commissioners of the county in which the property is located for any price negotiated between the two boards.

(d) Board of Education May Contract for Construction. -- Notwithstanding the provisions of G.S. 115C-40 and G.S. 115C-521, a local board of education may enter into contracts for the erection of school buildings upon sites owned in fee simple by one or more counties in which the local school administrative unit is located.

(e) Scope. -- This section applies to Alleghany, Ashe, Avery, Bladen, Brunswick, Burke, Cabarrus, Caldwell, Camden, Carteret, Cherokee, Chowan, Columbus, Currituck, Dare, Duplin, Edgecombe, Forsyth, Franklin, Gates, Graham, Greene, Guilford, Halifax, Harnett, Haywood, Hyde, Iredell, Jackson, Johnston, Jones, Lee, Lenoir, Macon, Madison, Martin, Mitchell, Moore, Nash, New Hanover, Onslow, Orange, Pasquotank, Pender, Perquimans, Person, Pitt, Randolph, Richmond, Rockingham, Rowan, Sampson, Scotland, Stanly, Stokes, Surry, Union, Vance, Wake, Wilson, and Watauga Watauga, and Wayne Counties."

Section 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 8th day of July, 1998.

Became law on the date it was ratified.

H.B. 1475

SESSION LAW 1998-34

AN ACT TO ADD CERTAIN DESCRIBED PROPERTY TO THE CORPORATE LIMITS OF THE TOWN OF OCEAN ISLE BEACH.

The General Assembly of North Carolina enacts:

Section 1. The following described property is added to the corporate limits of the Town of Ocean Isle Beach:

NORTHERN TRACT

Beginning at an existing iron pipe having NCGS Coordinates of N 65,495.33 and E 2,167,907.41 as shown on survey by Jan K. Dale entitled SURVEY FOR TOWN OF OCEAN ISLE BEACH and dated 28 September 1990. Thence the following calls and distances N 33-02-39 W 2361.29 feet to a point; thence S 39-22-41 W 370.72 feet to a point; thence S 70-32-38 W 1997.26 feet to a point; thence S 86-45-45 W 787.71 feet to a point; thence N 18-29-20 W 145.86 feet to a point; thence N 58-24-18 W 383.59 feet to a point; thence S 76-06-45 W 267.40 feet to a point; thence S 62-12-56 W 194.70 feet to a point; thence N 30-18-42 W 272.03 feet to a point;

thence N 06-00-54 E 268.02 feet to a point; thence S 65-31-53 W 700.00 feet to a point; thence S 07-46-34 E 3275.35 feet to a point in the North right-of-way line of Old Georgetown Road (SR 1163); thence along said right-of-way N 66-44-37 E 1671.03 feet to a point; thence 216.25 feet along a curve having a radius of 2894.79 feet; thence N 70-50-02 E 1175.50 feet to a point; thence 1732.70 feet along a curve having a radius of 34407.47 feet, to a point; thence N 5-45-27 W 18.23 feet to a point; thence N 72-49-15 E 843.09 feet to the POINT OF BEGINNING and containing some 275.11 acres more or less, including some 5.14 acres of BEMC right-of-way.

SOUTHERN TRACT

Beginning at the same beginning point as described for Northern Tract; thence S 72-49-15 W 843.09 feet to a point; thence S 5-45-27 E approximately 78.23 feet to a point in the South right-of-way of Old Georgetown Road (SR 1163), said point being the POINT OF BEGINNING of the Southern Tract; thence S 5-45-27 E 3253.00 feet to a point; thence S 5-42-16 E 1237.68 feet to a point; thence S 5-42-16 E 960.73 feet to a point; thence N 83-23-35 W 131.87 feet to a point; thence N 67-47-18 W 396.00 feet to a point; thence N 65-57-18 W 202.62 feet to a point; thence S 89-12-42 W 45.54 feet to a point; thence N 65-40-01 W 196.63 feet to a point; thence N 05-42-16 W 394.68 feet to a point; thence S 77-17-44 W 166.78 feet to a point; thence S 76-56-46 W 1198.91 feet to a point; thence N-03-22-18 W 1177.45 feet to a point; thence S 66-37-38 W 870.22 feet to a point; thence N 03-25-31 E 818.17 feet to a point; thence S 68-04-44 W 658.90 feet to a point; thence N 07-48-09 W 816.40 feet to a point; thence S 89-01-33 W 350.00 feet to a point; thence S 68-17-11 W 1433.42 feet to a point; thence N 07-46-33 W 350.00 feet to a point; thence S 68-17-11 W 1433.42 feet to a point; thence N 07-46-33 W 1418.09 feet to a point on the South right-of-way line of Old Georgetown Road; thence along said right-of-way line N 66-59-02 E 98.56 feet to a point; thence N 66-44-37 E 2306.99 feet to a point; thence 211.87 feet along a curve having a radius of 2834.79 feet to a point; thence N 70-50-02 E 1175.60 feet to a point; thence 1718.54 feet along a curve having a radius of 34347.47 feet to the POINT OF BEGINNING and containing some 384.39 acres, more or less.

Section 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 8th day of July, 1998.

Became law on the date it was ratified.

S.B. 1356

SESSION LAW 1998-35

AN ACT TO MODIFY THE COMPOSITION OF THE BOONE TOURISM DEVELOPMENT AUTHORITY.

The General Assembly of North Carolina enacts:

Section 1. Section 2 of Chapter 170 of the 1987 Session Laws reads as rewritten:

"Sec. 2. Tourism Development Authority. (a) Appointment and membership. When the town council adopts a resolution levying a room occupancy tax under this act, it shall also adopt a resolution creating the Boone Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The Authority shall be composed of ~~seven~~ nine voting members appointed by the Boone Town Council as follows:

- (1) ~~Two residents of Boone~~ Three individuals who are owners or operators of hotels, motels, or other taxable tourist accommodations; accommodations in Boone, one of whom resides in Boone and two of whom reside in Watauga County.
- (2) ~~Two residents of Boone who have demonstrated an interest in tourism development and who do not own or operate hotels, motels, or other taxable tourist accommodations;~~ One resident of Watauga County who owns or operates a restaurant in Boone.
- (3) ~~Two residents of Boone who are members of the Boone Area Chamber of Commerce; and Commerce.~~
- (4) One member of the Boone Town Council.
- (5) Two residents of the Town of Boone.

The Finance Officer for the Town of Boone shall be the ex officio finance officer of the Authority but shall not be a member of the authority.

The members of the Authority shall serve without compensation and shall serve for a term of three years, except that the town council shall designate three of the initial appointees to serve two-year terms. Vacancies shall be filled in the same manner as original appointments and members appointed to fill vacancies shall serve for the remainder of the unexpired term. The Authority shall elect from its membership a chair; the Authority shall meet at the call of the chair and shall adopt rules of procedure to govern its meetings.

(b) Powers and duties. The Authority may contract with any person, firm, or organization to advise it and assist it in carrying out its duty to promote travel, tourism, and conventions for the Town of Boone.

(c) Reports. The Authority shall report quarterly and at the close of the fiscal year to the town council on its receipts and expenditures for the preceding quarter and for the year in such detail as the Council may require."

Section 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 13th day of July, 1998.

Became law on the date it was ratified.

S.B. 1479

SESSION LAW 1998-36

AN ACT RELATING TO INVESTMENTS MADE BY THE CITY OF WINSTON-SALEM.

The General Assembly of North Carolina enacts:

Section 1. The final paragraph of Section 5 of Chapter 296 of the Public-Local Laws of 1939, as amended by Chapter 721 of the Session Laws

of 1959, Chapter 565 of the Session Laws of 1965, Chapter 397 of the Session Laws of 1969, Chapter 1026 of the Session Laws of 1989, and Chapter 951 of the 1991 Session Laws, reads as rewritten:

"The City of Winston-Salem, or any governing body, agency, insurance company, person or other corporation contracting with the City of Winston-Salem for the investment, care or administration of said fund may invest and reinvest the funds constituting the said fund in one or more of the types of securities or other investments authorized by State law for the State Treasurer in G.S. 147-69.2. Additionally, the City of Winston-Salem or any agency, insurance company, person or other corporation contracting with the City of Winston-Salem for the investment, care or administration of funds may invest and reinvest any of the City's employee benefits ~~funds and funds~~, risk reserve ~~funds funds~~, City of Winston-Salem Cemetery Perpetual Care Fund, and capital reserves, as designated from time to time by the Board of Aldermen, in one or more of the types of securities or other investments authorized by State law for the State Treasurer in G.S. 147-69.2."

Section 2. Section 1.1 of Chapter 951 of the 1991 Session Laws reads as rewritten:

"Sec. 1.1. This act, insofar as it authorizes certain investments, amends G.S. 159-30 with regard to the investment of the Winston-Salem Police Officers Retirement Fund, employee benefits ~~funds and funds~~, risk reserve ~~funds funds~~, City of Winston-Salem Cemetery Perpetual Care Fund, and capital reserves, as designated from time to time by the Board of Aldermen, of the City of Winston-Salem only."

Section 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 13th day of July, 1998.

Became law on the date it was ratified.

S.B. 1518

SESSION LAW 1998-37

AN ACT RELATING TO THE DEFINITION OF SUBDIVISION FOR THE PURPOSE OF SUBDIVISION REGULATION IN STANLY COUNTY.

The General Assembly of North Carolina enacts:

Section 1. Chapter 930 of the 1987 Session Laws, as amended by Chapter 504 of the 1991 Session Laws and Chapter 574 of the 1993 Session Laws, reads as rewritten:

"§ 153A-335. 'Subdivision' defined.

For purposes of this Part, 'subdivision' means all divisions of a tract or parcel of land into two or more lots, building sites, or other divisions for the purpose, whether immediate or future, of sale or building development, and shall include all divisions of land involving the dedication of a new street or change in existing streets. The following shall not be included within this definition nor be subject to any regulations enacted pursuant to this Part:

(1) The combination or recombination of portions of previously subdivided and recorded lots if the total number of lots is not increased and

the resultant lots are equal to or exceed the standards of the county as shown by the regulations prescribed by this act;

(2) ~~The division of land into parcels greater than five acres where the grantor or developer records a right-of-way agreement prior to or simultaneously with the recording of the deed, which said agreement provides for access to the parcel by right-of-way at least 60 feet in width and contains an agreement for construction and maintenance of the road; 10 acres where no street right-of-way dedication is involved;~~

(3) The public acquisition by purchase of strips of land for widening or opening streets;

(4) The conveyance of a tract or parcel of land with a minimum of 20,000 square feet exclusive of the State right-of-way for a road with at least 100 feet frontage upon a State-maintained road;

(5) The division of land pursuant to an order of the General Court of Justice;

(6) The conveyance of a lot or tract for the purpose of dividing land among tenants in common, all of whom inherited, by intestacy or by will, the land from a common ancestor; and

(7) The division of a tract in single ownership whose entire area is no greater than two acres into no more than three lots, where no street right-of-way dedication is involved, and where the resultant lots are equal to or exceed the standards of the county, as shown by the subdivision regulations contained in this act."

Section 2. This act applies to Stanly County only.

Section 3. This act is effective when it becomes law and shall not have any effect on subdivisions submitted for approval to the Stanly County Planning Department prior to the effective date of this act.

In the General Assembly read three times and ratified this the 13th day of July, 1998.

Became law on the date it was ratified.

H.B. 1288

SESSION LAW 1998-38

AN ACT TO ADD TWO MEMBERS TO THE MONTREAT BOARD OF COMMISSIONERS AND TO PROVIDE FOR THE ELECTION OF THE ADDITIONAL MEMBERS.

The General Assembly of North Carolina enacts:

Section 1. Effective the first Monday in December of 1998, the Board of Commissioners of the Town of Montreat is increased from three to five members.

Section 2. The persons elected to fill the two additional seats on the Board of Commissioners shall be elected in the November 3, 1998, general election, shall take office on the first Monday in December 1998, and shall hold office for terms of three years, which terms shall expire at the first organizational meeting of the Board of Commissioners after the municipal election in November 2001. Persons elected to fill the two additional seats on the Board of Commissioners in 2001 and thereafter shall serve for terms of four years.

Section 3. The Buncombe County Board of Elections shall hold a filing period which shall open at 12:00 noon on July 7, 1998, and close at 12:00 noon on August 4, 1998, for candidates to file for the new seats on the Board of Commissioners.

Section 4. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 14th day of July, 1998.

Became law on the date it was ratified.

H.B. 1504

SESSION LAW 1998-39

AN ACT TO ADD CERTAIN DESCRIBED PROPERTY TO THE CORPORATE LIMITS OF THE TOWN OF PEMBROKE.

The General Assembly of North Carolina enacts:

Section 1. The following described property is added to the corporate limits of the Town of Pembroke:

TRACT A

In Pembroke Township, Robeson County, North Carolina South of the Town of Pembroke Corporate Limits and adjoining, on the Southeast side of and adjoining the North South CSX railroad, on all sides of the Secondary Road Number 1339 and Secondary Road Number 1555 intersection bounded on the Southeast by Albert Hunt and W. M. Revels and on the South by the Lumber River and being more particularly described as follows:

Beginning at a point on the Northwest Secondary Road Number 1555 right-of-way (30 feet from center) where the original Town of Pembroke South Corporate Limits intersects said right-of-way; runs thence as its South line South 85 degrees 17 minutes East 1411.32 feet to an iron stake in a canal on the Southeast line of the Public Schools of Robeson County (20-E at Page 235); thence with the canal South 46 degrees 01 minutes West 1053 feet to an iron stake at its intersection with another canal on Albert Hunt's Northeast line; thence as said canal North 43 degrees 32 minutes 36 seconds West 216 feet to his North corner at a bend in said canal; thence as his Northwest line with the canal South 40 degrees 27 minutes 24 seconds West 2574 feet to an iron stake in the center of Secondary Road Number 1339; thence as the canal South 40 degrees 27 minutes 24 seconds West 1240.05 feet with and beyond the canal to a point in the Lumber River; thence up the River the following: North 78 degrees 13 minutes 40 seconds West 107.51 feet; North 56 degrees 48 minutes 58 seconds West 100.51 feet; North 23 degrees 52 minutes 01 seconds West 64.03 feet; North 59 degrees 02 minutes 18 seconds East 111.80 feet; North 39 degrees 53 minutes 50 seconds East 103.80 feet; North 28 degrees 36 minutes West 234.50 feet; and South 69 degrees 23 minutes 50 seconds West 430.10 feet to an iron stake in the River on the Southeast CSX railroad right-of-way (50 feet from center); thence as said right-of-way North 33 degrees 51 minutes 30 seconds East 1481.40 feet to an iron stake in the center of Secondary Road 1339; thence as said right-of-way North 30 degrees 18 minutes 40 seconds East 1968.04 feet to an iron stake on said right-of-way as its intersection with the Southwest line of the Town of Pembroke Area "C"

Annex (M.B. 31 @ 12); thence as said line South 58 degrees 40 minutes East 389.43 feet to an iron stake on the Northwest Secondary Road Number 1555 right-of-way (30 feet from center); thence as said right-of-way North 35 degrees 58 minutes 30 seconds East 666.16 feet to the beginning containing 90.37 acres.

TRACT B

In Pembroke Township, Robeson County, NC on the East side of and adjoining the original East Town of Pembroke Corporate limits bounded on the North by Secondary Road Number 1565 and the South by Secondary Road Number 1564 and the East to West CSX Railroad right-of-way and being more particularly described as follows:

Beginning at a point on the Southwest Secondary Road Number 1565 right-of-way (30 feet from center) where said right-of-way intersects the original Town of Pembroke East Corporate limits; runs thence as said right-of-way South 36 degrees 23 minutes East 26.05 feet; South 41 degrees 04 minutes 25 seconds East 93.80 feet; South 41 degrees 37 minutes 35 seconds East 234.56 feet; South 40 degrees 25 minutes East 1000 feet; South 31 degrees 33 minutes East 500 feet; South 23 degrees 04 minutes East 200 feet; South 17 degrees 49 minutes 33 seconds East 551.56 feet and South 6 degrees 53 minutes 33 seconds 1105.80 feet to its intersection with the North Secondary Road Number 1564 right-of-way and the North CSX Railroad right-of-way (100 feet from center); thence as the North right-of-way North 63 degrees 42 minutes West 1944 feet to an iron stake on said right-of-way at its intersection with the original Town of Pembroke East Corporate limits; thence as said line North 5 degrees 14 minutes 15 seconds East 2410.09 feet to the beginning containing 70.96 Acres.

Section 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 14th day of July, 1998.

Became law on the date it was ratified.

H.B. 1622

SESSION LAW 1998-40

AN ACT TO AUTHORIZE THE TOWNS OF WALLACE AND FAISON TO CONVEY CERTAIN PROPERTY AT A PRIVATE SALE.

The General Assembly of North Carolina enacts:

Section 1. Notwithstanding Article 12 of Chapter 160A of the General Statutes, the Town of Wallace may convey by private negotiation and sale, with or without monetary consideration, any or all of its right, title, and interest in the Stevcoknit Fabrics buildings and the land upon which the buildings are situated.

Section 2. Notwithstanding G.S. 158-7.1, if the Town of Wallace receives the Stevcoknit Fabrics buildings as a gift, any consideration the Town receives for the sale of the buildings shall constitute sufficient consideration under G.S. 158-7.1.

Section 3. Notwithstanding Article 12 of Chapter 160A of the General Statutes, the Town of Faison may convey by private negotiation and sale, with or without monetary consideration, any or all of its right, title,

and interest in a 50 foot x 50 foot tract of land on NC 403 North to North Carolina Natural Gas Company.

Section 4. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 14th day of July, 1998.

Became law on the date it was ratified.

H.B. 1637

SESSION LAW 1998-41

AN ACT TO SETTLE ANNEXATION LITIGATION BY REPEALING AN ANNEXATION ORDINANCE OF THE TOWN OF CAPE CARTERET.

The General Assembly of North Carolina enacts:

Section 1. Annexation Ordinance 96-07-03, adopted by the Board of Commissioners of the Town of Cape Carteret on July 29, 1996, is repealed as to territory north of Pettiford Bay. It is validated as to the remaining areas covered by the ordinance. The area removed from the annexation by this act shall be subject to the planning jurisdiction of the Town of Cape Carteret.

Section 2. This act becomes effective July 29, 1996.

In the General Assembly read three times and ratified this the 14th day of July, 1998.

Became law on the date it was ratified.

H.B. 1638

SESSION LAW 1998-42

AN ACT TO EXPAND FROM TEN PERCENT TO TWENTY-FIVE PERCENT OF THE PRIMARY CORPORATE LIMITS OF THE TOWN OF MOREHEAD CITY THAT MAY BE IN SATELLITE ANNEXATIONS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 160A-58.1(b)(5) reads as rewritten:

"(5) The area within the proposed satellite corporate limits, when added to the area within all other satellite corporate limits, may not exceed ~~ten percent (10%)~~ twenty-five percent (25%) of the area within the primary corporate limits of the annexing city."

Section 2. This act applies to the Town of Morehead City only.

Section 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 14th day of July, 1998.

Became law on the date it was ratified.

S.B. 1137

SESSION LAW 1998-43

AN ACT TO INCORPORATE THE VILLAGE OF WESLEY CHAPEL.

The General Assembly of North Carolina enacts:

Section 1. A Charter for the Village of Wesley Chapel is enacted as follows:

"CHARTER OF VILLAGE OF WESLEY CHAPEL.

"CHAPTER I.

"INCORPORATION AND CORPORATE POWERS.

"Section 1.1. **Incorporation and Corporate Powers.** The inhabitants of the Village of Wesley Chapel, which area is described in Section 2.1 of this Charter, are a body corporate and politic under the name 'Village of Wesley Chapel.' Under that name they have all the powers, duties, rights, privileges, and immunities conferred and imposed on cities by the general law of North Carolina.

"CHAPTER II.

"CORPORATE BOUNDARIES.

"Sec. 2.1. **Village Boundaries.** Until modified in accordance with the law, the boundaries of the Village of Wesley Chapel are as follows:

BEGINNING at a point in the centerline of Wesley Chapel-Stouts Road (SR 1377) that intersects with the northwestern extension of the northern property boundary line of parcel 001 as shown on tax map 7-096; thence southeasterly with said property boundary line approximately 3,630 feet to the centerline of the East Fork Twelve Mile Creek; thence southerly with said creek to a point being the centerline of Goldmine Road (SR 1162); thence with the centerline of Goldmine Road in an easterly direction to the intersection of the extension of the centerline of Birmingham Lane; thence with the centerline of Birmingham Lane in a southerly direction to the northeast corner of the property boundary line of parcel 26-A as shown on tax map 7-096; thence southeastward approximately 300 feet to the northeast corner of the property boundary line of parcel 26 as shown on tax map 7-096; thence southwestward approximately 250 feet to the centerline of Birmingham Lane; thence southeastward along the centerline of Birmingham Lane approximately 800 feet to the extension of the southeast corner property boundary line of parcel 4-F as shown on tax map 7-096; thence southwestward with said property boundary line approximately 1,020 feet and then westward with said property boundary line approximately 1,204 feet to the centerline of East Fork Twelve Mile Creek; thence following the southwesterly direction of said creek approximately 2,517 feet with the intersection of N.C. Highway 84; thence following the southerly direction of said creek approximately 1,650 feet to a point being the northernmost corner property boundary line of parcel 7-A as shown on tax map 6-006; thence easterly approximately 333 feet to a point being the northernmost corner of property boundary line of parcel 9 as shown on tax map 6-006; thence southeasterly then southwesterly and then northwesterly with said parcel until it intersects with the centerline of Potter Road (SR 1162); thence southward on said road approximately 247 feet to the intersection of the extension of the centerline of Parkside Drive; thence westward with the centerline of said road approximately 412 feet to a point being the northernmost property boundary corner of parcel 41 as shown on tax map 6-027; thence southeasterly with the eastern property boundary line of said parcel approximately 825 feet to a point being the easternmost property boundary line of parcel 31 as shown on tax map 6-027; thence southwesterly

with the southern property boundary line of said parcel approximately 810 feet to a point being the southernmost property boundary line of parcel 28 as shown on tax map 6-027; thence northwesterly with the western property boundary line of said parcel approximately 1,155 feet to a point being the southernmost property boundary line of parcel 11 as shown on tax map 6-027; thence northerly and then southwestward with said parcel approximately 1,002 feet to a point being the northeastern corner property boundary line of parcel 5-A as shown on tax map 6-027; thence southeasterly with said parcel approximately 736 feet to the intersection with the centerline of the East Fork Twelve Mile Creek; thence southwestward with said creek approximately 4,785 feet to a point being the centerline of Chambwood Road (SR 1336); thence northeasterly with the centerline of Chambwood Road approximately 2,475 feet to a point being the southernmost property boundary line of parcel 42 as shown on tax map 6-027; thence northwesterly with the southern property line of said parcel approximately 1,155 feet to a point being the intersection with the southern boundary line of parcel 4-C as shown on tax map 6-027; thence westerly with the southern property line of said parcel approximately 1,072 feet and then northwesterly with the western property line of said parcel approximately 1,815 feet to a point being the northernmost property boundary line of parcel 4-B as shown on tax map 6-027; thence northwesterly with the western property boundary line of parcel 8-B as shown on tax map 6-048 approximately 853 feet to a point being the southeastern property boundary line of parcel 20 as shown on tax map 6-045; thence westerly with said parcel approximately 786 feet and then northwesterly with said parcel approximately 509 feet to a point being the intersection of the extension of said line northwestward and the centerline of N. C. Highway 84; thence easterly with the centerline of N. C. Highway 84 approximately 577 feet to a point being the intersection of said centerline and the southeastward extension of the western property boundary line of parcel 16 as shown on tax map 6-045, thence northwesterly then southeasterly and then northwesterly with said parcel approximately 620 feet to a point being the northwestern most property boundary line of parcel 11 as shown on tax map 6-045; thence northwesterly approximately 1,155 feet to a point being the northeast corner of parcel 7-B as shown on tax map 6-045; thence southerly and then northwesterly with said parcel approximately 1,017 feet to a point being the southwestern most property boundary line of parcel 15-A as shown on tax map 6-045; thence northerly with said parcel approximately 247 feet to a point being the southeastern most property boundary line of parcel 22-B as shown on tax map 6-045; thence westerly and then northerly with said parcel approximately 660 feet to a point being the intersection with the southern property boundary line of parcel 24 as shown on tax map 6-045; thence westerly then northerly with said parcel approximately 577 feet to a point being the intersection with the centerline of Underwood Road (SR 1377); thence southeasterly with the centerline of said road approximately 1,139 feet to a point being the extension of the western property boundary line of parcel 16 as shown on tax map 6-045; thence northerly and then southeasterly with said parcel to a point being the intersection of the centerline of Little Twelve Mile Creek; thence northerly with said creek approximately 2,145 feet to a point being the intersection

with Potter Road (SR 1346); thence northerly with said creek approximately 1,520 feet to a point being a corner in the southwestern property boundary line of parcel 2 as shown on tax map 6-021; thence northeasterly, then northerly, then westerly, and then northerly with said property line to a point being the southern property boundary line of parcel 3 as shown on tax map 6-021; thence westerly with said parcel approximately 330 feet to a point being the corner of the southwest property boundary line of said parcel; thence northeasterly approximately 1,815 feet to a point being the intersection with the southwestward property boundary line of parcel 5 as shown on tax map 7-120; thence northwesterly then northeasterly and then southeasterly with said property line to a point being the northernmost corner property boundary line of parcel 7 as shown on tax map 7-120; thence with the extension of said property boundary line to the centerline of Hawfield Road (SR 1354); thence southeasterly with the centerline of said road approximately 2,145 feet to the intersection with the centerline of Wesley Chapel-Stouts Road (SR 1377); thence northeasterly with the centerline of said road approximately 1,980 feet to the point and place of BEGINNING. Excluded from this description are Tracts IV, V, and VI annexed to the Town of Indian Trail under Part 4 of Article 4A of Chapter 160A of the General Statutes by Annexation Ordinance 40 adopted May 25, 1998, more particularly described as follows:

TRACT IV:

BEGINNING at a point where the centerline of the right-of-way of S.R. 1162 (known as Goldmine Road) intersects the centerline of the right-of-way of S.R. 1377 (known as Wesley Chapel-Stouts Road) (the right-of-way for each road being 60 feet wide), and running from said beginning point with the center of the right-of-way of S.R. 1377 as follows: (1) N 44-22-25 E 148.77 feet to a point; (2) N 40-39-45 E 528.84 feet to a point, a corner of Lot 8 of Houston Farm Subdivision, Phase III (Plat Cabinet B, File 306-A, Union County Registry); thence with the southwestern boundary of Lot 8 of said subdivision, South 35-01-09 E 231.18 feet to a point, a corner of Lot 9 of Houston Farm Subdivision, Phase III; thence with southwest boundary of Lot 9 of said subdivision, S 34-51-04 E 249.94 feet to a point in the center of the right-of-way of S.R. 1162; thence with the center of the right-of-way of S.R. 1162 as follows: (1) S 82-52-40 W 134.60 feet to a point; (2) S 80-44-44 W 558.83 feet to a point; (3) S 80-32-27 W 39.54 feet to the point of BEGINNING, and containing 3.54 acres, more or less, as shown on copy of map of survey prepared by F. Donald Lawrence & Associates, P.A., NCRLS, dated October 27, 1986, and recorded in Plat Cabinet B, at Page 306-A, Union County Registry.

TRACT V:

BEGINNING at a point where the centerline of the right-of-way of S.R. 1162 (known as Goldmine Road) intersects with the centerline of the right-of-way of S.R. 1377 (known as Wesley Chapel-Stouts Road), and running from said beginning point with the centerline of the right-of-way of S.R. 1162 as follows: (1) S 80-32-25 W 320.00 feet to a point; (2) S 80-33-44 W 591.51 feet to a point; (3) S 75-37-55 W 89.30 feet to a point; (4) S 47-08-50 W 60.77 feet to a point; (5) S 11-11-50 W 64.16 feet to a point near the center of the intersection of S.R. 1162 and S.R. 1355; thence N 15-46-08

W 35.86 feet to a point within the right-of-way of S.R. 1162; thence N 32-02-38 W 181.80 feet to a point in the center of the right-of-way of S.R. 1355; thence with the center of the right-of-way of S.R. 1355 as follows: (1) N 29-11-30 W 293.99 feet to a point; (2) N 32-02-58 W 431.58 feet to a point; (3) N 32-38-20 W 364.15 feet to a point in the center of said road right-of-way; thence N 45-02-45 E 3329.74 feet to a point in the southwestern boundary of the right-of-way of S.R. 1354 (known as Hawfield Road); thence within the right-of-way of S.R. 1354 (but not the centerline thereof), S 36-43-29 E 1656.35 feet to the point where the centerline of S.R. 1354 intersects the centerline of the right-of-way of S.R. 1377; thence with the center of the right-of-way of S.R. 1377 as follows: (1) S 51-43-45 W 98.35 feet to a point; (2) S 47-36-55 W 68.82 feet to a point; (3) S 41-39-39 W 102.57 feet to a point; (4) S 38-38-51 W 105.59 feet to a point; (5) S 38-07-38 W 270.65 feet to a point; (6) S 39-00-58 W 103.56 feet to a point; (7) S 40-22-09 W 110.27 feet to a point; (8) S 40-39-45 W 1471.25 feet to a point; (9) S 44-22-25 W 148.77 feet to the point of BEGINNING, and containing 129.06 acres, more or less, as shown on copy of unrecorded map of survey prepared by F. Donald Lawrence & Associates, P.A., NCRLS, dated March 6, 1986.

TRACT VI:

Beginning at a point in the centerline of Goldmine Road (S.R. 1162) the common corner of Lot #12 and #11 of Houston Farms, Phase I as shown on plat recorded in Plat Cabinet A, File 101-A, Union County Registry. Thence with the centerline of said road as follows: 1st N12-56-05W 122.27', 2nd N13-03-20W 105.36', 3rd N07-14-55W 76.96', 4th N11-11-50W 64.16', 5th N47-08-50W 60.77', 6th N76-37-55E 80.30', 7th N80-33-40E 419.44' to a point in the centerline of said road, the common corner of Lot #11 and #10, thence S33-44-00W 358.84' to an iron stake the common corner of Lot #10, #11, #12, thence S53-00-00W 366.35' to the point and place of BEGINNING, being all of Lot #11 and containing 3.34 acres.

"CHAPTER III.

"GOVERNING BODY.

"Sec. 3.1. **Structure of Governing Body; Number of Members.** The governing body of Village of Wesley Chapel is the Village Council, which has four members and the Mayor.

"Sec. 3.2. **Temporary Officers.** Until the initial election in 1999 provided for by Section 4.1 of this Charter, Al Black is appointed Mayor, and Allen Callahan, Mike Hafey, Ron Lawrence, and Beverly Williams are appointed members of the Village Council, and they shall possess and may exercise the powers granted to the Mayor and Town Council until their successors are elected or appointed and qualify pursuant to this Charter.

"Sec. 3.3. **Manner of Electing Village Council; Term of Office.** The qualified voters of the entire Village shall elect the members of the Village Council. Except as provided by this section, members are elected to a four-year term of office. In 1999, the two candidates receiving the highest numbers of votes are elected to a four-year term, and the two candidates receiving the next highest number of votes are elected to two-year terms. In

2001 and each two years thereafter, two members are elected for a four-year term.

"Sec. 3.4. **Manner of Electing Mayor; Term of Office.** The qualified voters of the entire Village shall elect the Mayor. The Mayor shall be elected in 1999 and each two years thereafter for a two-year term.

"CHAPTER IV.

"ELECTIONS.

"Sec. 4.1. **Conduct of Village Elections.** Village officers shall be elected on a nonpartisan basis and results determined by a plurality as provided in G.S. 163-292.

"CHAPTER V.

"ADMINISTRATION.

"Sec. 5.1. **Village to Operate under Mayor-Council Plan.** The Village of Wesley Chapel operates under the Mayor-Council plan as provided in Part 3 of Article 7 of Chapter 160A of the General Statutes."

Section 2. From and after the effective date of this act, the citizens and property in Village of Wesley Chapel shall be subject to municipal taxes levied for the year beginning July 1, 1998, and for that purpose the Village shall obtain from Union County a record of property in the area herein incorporated which was listed for taxes as of January 1, 1998. The Village may adopt a budget ordinance for fiscal year 1998-99 without following the timetable in the Local Government Budget and Fiscal Control Act, but shall follow the sequence of actions in the spirit of the act insofar as is practical. For fiscal year 1998-99, ad valorem taxes may be paid at par or face amount within 90 days of adoption of the budget ordinance, and thereafter in accordance with the schedule in G.S. 105-360 as if the taxes had been due and payable on September 1, 1998. If this act is ratified before July 1, 1998, the Village may adopt a budget ordinance for fiscal year 1997-98 without following the timetable in the Local Government Budget and Fiscal Control Act, but shall follow the sequence of actions in the spirit of the act insofar as is practical, but no ad valorem taxes may be levied for the 1997-98 fiscal year.

Section 3. This act includes within the boundary of the Village of Wesley Chapel some areas annexed by the Town of Indian Trail under Annexation Ordinance 30 adopted January 13, 1998, and Annexation Ordinance 36 adopted February 17, 1998. To the extent that this act conflicts with those ordinances, this act prevails. This act does not affect the validity of those ordinances as to any territory not included within the boundaries of the Village of Wesley Chapel, and those ordinances are validated as to such other territory.

Section 4. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 15th day of July, 1998.

Became law on the date it was ratified.

The General Assembly of North Carolina enacts:

Section 1. The County of Forsyth, or any governing body, agency, person, or other corporation that contracts with Forsyth County for the investment, care, or administration of monies held by the County in its Community Health Special Revenue Fund (hereinafter "Fund") may invest and reinvest monies constituting the Fund in one or more of the types of securities or other investments authorized by State law for the State Treasurer in G.S. 147-69.2.

Section 2. This act shall apply only to monies constituting the Fund as established by resolution adopted by the Forsyth County Board of Commissioners on October 13, 1997. All limitations on investment and reinvestment of monies in the Fund set forth in that resolution, and other limitations as may be enacted by the Forsyth County Board of Commissioners, shall apply.

Section 3. This act, insofar as it authorizes certain investments, amends G.S. 159-30 with regard to the investment of the Community Health Special Reserve Fund, as designated by the Forsyth County Board of Commissioners, only.

Section 4. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 15th day of July, 1998.

Became law on the date it was ratified.

S.B. 1093

SESSION LAW 1998-45

AN ACT TO REQUIRE THE DEPARTMENT OF ADMINISTRATION TO CERTIFY THE BROAD FEASIBILITY OF STATE CONSTRUCTION PROJECTS AND MAKE THAT CERTIFICATION A PREREQUISITE TO FUNDING.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143-341(3) reads as rewritten:

"(3) Architecture and Engineering:

- a. To examine and approve all plans and specifications for the construction or renovation of:
 1. All State buildings; and
 2. All community college buildings requiring the estimated expenditure for construction or repair work for which public bidding is required under G.S. 143-129 prior to the awarding of a contract for such work; and to examine and approve all changes in those plans and specifications made after the contract for such work has been awarded.
- b. To ~~prepare preliminary studies and cost estimates and otherwise to assist~~ assist, as necessary, all agencies in the preparation of requests for appropriations for the construction or renovation of all State buildings.
- b1. To certify that a statement of needs pursuant to G.S. 143-6 is feasible. For purposes of this sub-subdivision, 'feasible'

means that the proposed project is sufficiently defined in overall scope; building program; site development; detailed design, construction, and equipment budgets; and comprehensive project scheduling so as to reasonably ensure that it may be completed with the amount of funds requested. At the discretion of the General Assembly, advanced planning funds may be appropriated in support of this certification. This sub-subdivision shall not apply to requests for appropriations of less than one hundred thousand dollars (\$100,000).

- c. To supervise the letting of all contracts for the design, construction or renovation of all State buildings and all community college buildings whose plans and specifications must be examined and approved under a.2. of this subdivision.
- d. To supervise and inspect all work done and materials used in the construction or renovation of all State buildings and all community college buildings whose plans and specifications must be examined and approved under a.2. of this subdivision; and no such work may be accepted by the State or by any State agency until it has been approved by the Department.

Except for sub-subdivision b., this subdivision does not apply to the design, construction, or renovation or projects by The University of North Carolina pursuant to G.S. 116-31.11."

Section 2. G.S. 143-6 reads as rewritten:

"§ 143-6. *Information from departments and agencies asking State aid.*

(a) On or before the first day of September in the even-numbered years, each of the departments, bureaus, divisions, officers, boards, commissions, institutions, and other State agencies and undertakings receiving or asking financial aid from the State, or receiving or collecting funds under the authority of any general law of the State, shall furnish the Director all the information, data and estimates which he may request with reference to past, present and future appropriations and expenditures, receipts, revenue, and income.

(b) Any department, bureau, division, officer, board, commission, institution, or other State agency or undertaking desiring to request financial aid from the State for the purpose of constructing or renovating any State building, utility, or other property development (except a railroad, highway, or bridge structure) shall, before making any such request for State financial aid, submit to the Department of Administration a statement of its needs in terms of space and other physical requirements, and shall furnish the Department with such additional information as it may request. The Department of Administration shall then ~~prepare preliminary studies and cost estimates for the use of~~ review the statement of needs submitted by the requesting department, bureau, division, officer, board, commission, institution, or other State agency or undertaking ~~in presenting its request to the Director of the Budget.~~ and perform additional analysis, as necessary, to comply with G.S. 143-341.

(b1) All requests for financial aid for the purpose of constructing or renovating any State building, utility, or other property development (except a railroad, highway, or bridge structure) shall be accompanied by a certification from the Department of Administration as outlined in G.S. 143-341. The General Assembly may provide advanced planning funds but shall only provide construction funds when the requirements of this subsection have been met. This subsection shall not apply to requests for appropriations of less than one hundred thousand dollars (\$100,000).

(c) On or before the first day of September in the even-numbered years, each of the departments, bureaus, divisions, officers, boards, commissions, institutions, and other State agencies receiving or asking financial aid or support from the State, under the authority of any general law of the State, shall furnish the Director with the following information:

- (1) The amount of State funds disbursed in the immediately preceding two fiscal years and the purpose for which the funds were disbursed and used, the amount being requested as continuation funds for the upcoming fiscal year, and the justification for continued State support; and
- (2) Justification for continued State support shall include information on the extent of the public benefit being derived from State support."

Section 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 2nd day of July, 1998.

Became law upon approval of the Governor at 5:25 p.m. on the 15th day of July, 1998.

S.B. 452

SESSION LAW 1998-46

AN ACT TO CLARIFY LOCAL GOVERNMENT AUTHORITY TO REGULATE THE LOCATION AND OPERATION OF SEXUALLY ORIENTED BUSINESSES.

The General Assembly of North Carolina enacts:

Section 1. Chapter 160A of the General Statutes is amended by adding the following new section:

"§ 160A-181.1. Regulation of sexually oriented businesses.

(a) The General Assembly finds and determines that sexually oriented businesses can and do cause adverse secondary impacts on neighboring properties. Numerous studies that are relevant to North Carolina have found increases in crime rates and decreases in neighboring property values as a result of the location of sexually oriented businesses in inappropriate locations or from the operation of such businesses in an inappropriate manner. Reasonable local government regulation of sexually oriented businesses in order to prevent or ameliorate adverse secondary impacts is consistent with the federal constitutional protection afforded to nonobscene but sexually explicit speech.

(b) In addition to State laws on obscenity, indecent exposure, and adult establishments, local government regulation of the location and operation of

sexually oriented businesses is necessary to prevent undue adverse secondary impacts that would otherwise result from these businesses.

(c) A city or county may regulate sexually oriented businesses through zoning regulations, licensing requirements, or other appropriate local ordinances. The city or county may require a fee for the initial license and any annual renewal. Such local regulations may include, but are not limited to:

- (1) Restrictions on location of sexually oriented businesses, such as limitation to specified zoning districts and minimum separation from sensitive land uses and other sexually oriented businesses;
- (2) Regulations on operation of sexually oriented businesses, such as limits on hours of operation, open booth requirements, limitations on exterior advertising and noise, age of patrons and employees, required separation of patrons and performers, clothing restrictions for masseuses, and clothing restrictions for servers of alcoholic beverages;
- (3) Clothing restrictions for entertainers; and
- (4) Registration and disclosure requirements for owners and employees with a criminal record other than minor traffic offenses, and restrictions on ownership by or employment of a person with a criminal record that includes offenses reasonably related to the legal operation of sexually oriented businesses.

(d) In order to preserve the status quo while appropriate studies are conducted and the scope of potential regulations is deliberated, cities and counties may enact moratoria of reasonable duration on either the opening of any new businesses authorized to be regulated under this section or the expansion of any such existing business. Businesses existing at the time of the effective date of regulations adopted under this section may be required to come into compliance with newly adopted regulations within an appropriate and reasonable period of time.

(e) Cities and counties may enter into cooperative agreements regarding coordinated regulation of sexually oriented businesses, including provision of adequate alternative sites for the location of constitutionally protected speech within an interrelated geographic area.

(f) For the purpose of this section, 'sexually oriented businesses' means any businesses or enterprises that have as one of their principal business purposes or as a significant portion of their business an emphasis on matter and conduct depicting, describing, or related to anatomical areas and sexual activities specified in G.S. 14-202.10. Local governments may adopt detailed definitions of these and similar businesses in order to precisely define the scope of any local regulations."

Section 2. G.S. 14-190.1 is amended by adding a new subsection to read:

"(i) Nothing in this section shall be deemed to preempt local government regulation of the location or operation of sexually oriented businesses to the extent consistent with the constitutional protection afforded free speech."

Section 3. G.S. 14-190.9 is amended by adding a new subsection to read:

"(c) Notwithstanding any other provision of law, a local government may regulate the location and operation of sexually oriented businesses. Such local regulation may restrict or prohibit nude, seminude, or topless dancing to the extent consistent with the constitutional protection afforded free speech."

Section 4. G.S. 14-202.10(1) reads as rewritten:

"(1) 'Adult bookstore' means a bookstore:

- a. Which receives a majority of its gross income during any calendar month from the sale or rental of publications (including books, magazines, ~~and other periodicals~~) other periodicals, videotapes, compact discs, other photographic, electronic, magnetic, digital, or other imaging medium) which are distinguished or characterized by their emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas, as defined in this section; or
- b. Having as a preponderance (either in terms of the weight and importance of the material or in terms of greater volume of materials) of its publications (including books, magazines, and other periodicals other periodicals, videotapes, compact discs, other photographic, electronic, magnetic, digital, or other imaging medium) which are distinguished or characterized by their emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas, as defined in this section."

Section 5. G.S. 14-202.11 reads as rewritten:

"§ 14-202.11. Restrictions as to adult establishments.

(a) No person shall permit any building, premises, structure, or other facility that contains any adult establishment to contain any other kind of adult establishment. No person shall permit any building, premises, structure, or other facility in which sexually oriented devices are sold, distributed, exhibited, or contained to contain any adult establishment.

(b) No person shall permit any viewing booth in an adult mini motion picture theatre to be occupied by more than one person at any time.

(c) Nothing in this section shall be deemed to preempt local government regulation of the location or operation of adult establishments or other sexually oriented businesses to the extent consistent with the constitutional protection afforded free speech."

Section 6. G.S. 18B-904 is amended by adding the following new subsection:

"(g) Nothing in this Chapter shall be deemed to preempt local governments from regulating the location or operation of adult establishments or other sexually oriented businesses to the extent consistent with the constitutional protection afforded free speech, or from requiring any additional fee for licensing as permitted under G.S. 160A-181.1(c)."

Section 7. G.S. 19-1 reads as rewritten:

"§ 19-1. What are nuisances under this Chapter.

(a) The erection, establishment, continuance, maintenance, use, ownership or leasing of any building or place for the purpose of

assignation, prostitution, gambling, illegal possession or sale of alcoholic beverages, illegal possession or sale of narcotic drugs as defined in the North Carolina Controlled Substances Act, or illegal possession or sale of obscene or lewd matter, as defined in this Chapter, shall constitute a nuisance.

(b) The erection, establishment, continuance, maintenance, use, ownership or leasing of any building or place wherein or whereon are carried on, conducted, or permitted repeated acts which create and constitute a breach of the peace shall constitute a nuisance.

(b1) The erection, establishment, continuance, maintenance, use, ownership or leasing of any building or place wherein or whereon are carried on, conducted, or permitted repeated activities or conditions which violate a local ordinance regulating sexually oriented businesses so as to contribute to adverse secondary impacts shall constitute a nuisance.

(c) ~~The building, or place, or vehicle,~~ place, vehicle, or the ground itself, in or upon which a nuisance as defined in ~~subsections (a) or (b) above~~ subsection (a), (b), or (b1) of this section is carried on, and the furniture, fixtures, and contents, are also declared a nuisance, and shall be enjoined and abated as hereinafter provided."

Section 8. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 8th day of July, 1998.

Became law upon approval of the Governor at 5:27 p.m. on the 15th day of July, 1998.

S.B. 962

SESSION LAW 1998-47

AN ACT TO AMEND THE MENTAL HEALTH COMMITMENT LAW TO PROVIDE FOR VOLUNTARY ADMISSION OF PARENTS WHO ARE SUBSTANCE ABUSERS AND THEIR CHILDREN UNDER AGE THREE.

The General Assembly of North Carolina enacts:

Section 1. (a) G.S. 122C-211 reads as rewritten:

"(a) Except as provided in subsections (b) through ~~(e)~~ (f) of this section, any ~~individual~~ individual, including a parent in a family unit, in need of treatment for mental illness or substance abuse may seek voluntary admission at any facility by presenting himself for evaluation to the facility. No physician's statement is necessary, but a written application for evaluation or admission, signed by the individual seeking admission, is required. The application form shall be available at all times at all facilities. However, no one shall be denied admission because application forms are not available. An evaluation shall determine whether the individual is in need of care, treatment, habilitation or rehabilitation for mental illness or substance abuse or further evaluation by the facility. Information provided by family members regarding the individual's need for treatment shall be reviewed in the evaluation. An individual may not be accepted as a client if the facility determines that the individual does not need or cannot benefit from the care, treatment, habilitation, or rehabilitation available and that the

individual is not in need of further evaluation by the facility. The facility shall give to an individual who is denied admission a referral to another facility or facilities that may be able to provide the treatment needed by the client.

(b) In 24-hour facilities the application shall acknowledge that the applicant may be held by the facility for a period of 72 hours after any written request for release that ~~he~~ the applicant may make, and shall acknowledge that the 24-hour facility may have the legal right to petition for involuntary commitment of the applicant during that period. At the time of application, the facility shall tell the applicant about procedures for discharge.

(c) Any individual who voluntarily seeks admission to a 24-hour facility in which medical care is an integral component of the treatment shall be examined and evaluated by a physician of the facility within 24 hours of admission. The evaluation shall determine whether the individual is in need of treatment for mental illness or substance abuse or further evaluation by the facility. If the evaluating physician determines that the individual will not benefit from the treatment available, the individual shall not be accepted as a client.

(d) Any individual who voluntarily seeks admission to any 24-hour facility, other than one in which medical care is an integral component of the treatment, shall have a medical examination within 30 days before or after admission if it is reasonably expected that ~~he~~ the individual will receive treatment for more than 30 days or shall produce a current, valid physical examination report, signed by a physician, completed within 12 months prior to the current admission. When applicable, this examination may be included in an examination conducted to meet the requirements of G.S. 122C-223 or G.S. 122C-232.

(e) When an individual from a single portal area seeks admission to an area or State 24-hour facility, the admission shall follow the procedures as prescribed in the area plan. When an individual from a single portal area presents himself for admission to the facility directly and is in need of an emergency admission, ~~he~~ the individual may be accepted for admission. The facility shall notify the area authority within 24 hours of the admission. Further planning of treatment for the client is the joint responsibility of the area authority and the facility as prescribed in the area plan.

(f) A family unit may voluntarily seek admission to a 24-hour substance abuse facility that is able to provide, directly or by contract, treatment, habilitation, or rehabilitation services that will specifically address the family unit's needs. These services shall include gender-specific substance abuse treatment, habilitation, or rehabilitation for the parent as well as assessment, well-child care, and, as needed, early intervention services for the child. A family unit that voluntarily seeks admission to a 24-hour substance abuse facility shall be evaluated by the facility to determine whether the family unit would benefit from the services of the facility. A facility shall not accept a family unit as a client if the facility determines that the family unit does not need or cannot benefit from the care, habilitation, or rehabilitation available at the facility. The facility shall give to a family unit that is denied admission a referral to another facility or facilities that may be able to

provide treatment needed by the family unit. Except as otherwise provided, this section applies to a parent in a family unit seeking admission under this section.

(g) As used in this Part, the term 'family unit' means a parent and the parent's dependent children under the age of three years."

Section 2. This act becomes effective October 1, 1997.

In the General Assembly read three times and ratified this the 13th day of July, 1998.

Became law upon approval of the Governor at 3:19 p.m. on the 16th day of July, 1998.

H.B. 1284

SESSION LAW 1998-48

AN ACT TO ALLOW ALAMANCE, ALEXANDER, DAVIDSON, DAVIE, AND WILKES COUNTIES TO ACQUIRE PROPERTY FOR USE BY THE COUNTY BOARDS OF EDUCATION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 153A-158.1 reads as rewritten:

"§ 153A-158.1. Acquisition and improvement of school property in certain counties.

(a) Acquisition by County. -- A county may acquire, by any lawful method, any interest in real or personal property for use by a school administrative unit within the county. In exercising the power of eminent domain a county shall use the procedures of Chapter 40A. The county shall use its authority under this subsection to acquire property for use by a school administrative unit within the county only upon the request of the board of education of that school administrative unit and after a public hearing.

(b) Construction or Improvement by County. -- A county may construct, equip, expand, improve, renovate, or otherwise make available property for use by a school administrative unit within the county. The local board of education shall be involved in the design, construction, equipping, expansion, improvement, or renovation of the property to the same extent as if the local board owned the property.

(c) Lease or Sale by Board of Education. -- Notwithstanding the provisions of G.S. 115C-518 and G.S. 160A-274, a local board of education may, in connection with additions, improvements, renovations, or repairs to all or part of any of its property, lease or sell the property to the board of commissioners of the county in which the property is located for any price negotiated between the two boards.

(d) Board of Education May Contract for Construction. -- Notwithstanding the provisions of G.S. 115C-40 and G.S. 115C-521, a local board of education may enter into contracts for the erection of school buildings upon sites owned in fee simple by one or more counties in which the local school administrative unit is located.

(e) Scope. -- This section applies to Alamance, Alexander, Alleghany, Ashe, Avery, Bladen, Brunswick, Burke, Cabarrus, Camden, Carteret, Cherokee, Chowan, Columbus, Currituck, Dare, Davidson, Davie, Duplin,

Edgecombe, Forsyth, Franklin, Gates, Graham, Greene, Guilford, Halifax, Harnett, Haywood, Hyde, Iredell, Jackson, Johnston, Jones, Lee, Macon, Madison, Martin, Moore, Nash, New Hanover, Onslow, Orange, Pasquotank, Pender, Perquimans, Person, Pitt, Randolph, Richmond, Rockingham, Rowan, Sampson, Scotland, Stanly, Stokes, Surry, Union, Vance, Wake, Wilkes, Wilson, and Watauga Counties."

Section 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 20th day of July, 1998.

Became law on the date it was ratified.

H.B. 1611

SESSION LAW 1998-49

AN ACT TO CLARIFY THE PART OF THE CARTERET/ CRAVEN COUNTY BOUNDARY MODIFIED BY CHAPTER 207 OF THE 1993 SESSION LAWS NOW THAT THE SURVEY REQUIRED BY THAT ACT HAS BEEN MADE.

The General Assembly of North Carolina enacts:

Section 1. Section 6 of Chapter 207 of the 1993 Session Laws reads as rewritten:

"Sec. 6. The portion of the boundary between Carteret and Craven Counties affected by this act ~~shall be~~ has been surveyed and mapped by Carteret and Craven Counties in accordance with G.S. 153A-18. Such action ~~shall be~~ was completed by March 31, 1994. survey dated May 16, 1994. The corrected metes and bounds description produced by that survey is set out in Section 1 of this act."

Section 2. Section 1 of Chapter 207 of the 1993 Session Laws reads as rewritten:

"Section 1. A portion of the common dividing line between Carteret County, North Carolina, and Craven County, North Carolina, shall be as follows:

Beginning at a point in Hunters Creek which divides Carteret and Jones Counties, ~~which point is identified and labeled "A" on a map of the Carteret-Craven Boundary dated May 28, 1992, a copy of which shall be filed with the Registers of Deeds in Carteret County and Craven County. The Registers of Deeds shall accept such document for filing in the form presented by the Counties. All N. C. State Plane Grid Coordinates used in the map are based on the North American Datum of 1927 and are in units of U. S. Survey Feet. The said point of beginning bears N. C. State Plane Grid Coordinates (N=391,810+- and E=2,576,800+-).~~

~~Thence from the said point of beginning in an easterly direction to Point "B" on said map (N=391,570+- and E=2,610,400+-); thence continuing in an easterly direction to Point "C" on said map (N=391,720+- and E=2,613,870+-); thence in a northerly direction to point "D" on said map (N=397,390+- and E=2,613,655+-); thence in an easterly direction to a point in the centerline of US Highway 70 labeled "E" on said map (N=401,920+- and E=2,635,465+-); thence along and with the centerline of US Highway 70 in a northerly direction to a point in~~

~~the existing Carteret-Craven Boundary which is labeled as point "F" on said map (N=405,150+- and E=2,635,115+-); thence in an easterly direction along the existing Carteret-Craven Boundary to point "G" on said map (N=406,575+- and E=2,668,380+-); thence in a northeasterly direction to point "H" on said map (N=407,705+- and E=2,670,270+-); thence in a southeasterly direction to point "I" on said map (N=407,047+- and E=2,670,727+-); thence in an easterly direction to point "J" on said map (N=407,185+- and E=2,671,255+-); thence in a southeasterly direction to point "K" on said map (N=406,612+- and E=2,671,681+-); thence in a northeasterly direction to point "L" on said map (N=406,745+- and E=2,671,860+-); thence in a Northeasterly direction to point "M" on said map (N=406,800+- and E=2,671,940+-); thence in an easterly direction to point "N" on said map (N=406,915+- and E=2,672,390+-); thence in a southerly direction to point "O" on said map, the centerline of SR 1392 (Adam's Creek Road) (N=406,510+- and E=2,672,520+-); thence in an easterly direction to point "P" on said map (N=407,015+- and E=2,673,375+-); thence in an easterly direction to point "Q" on said map (N=407,145+- and E=2,673,730+-); thence in an easterly direction to point "R" on said map (N=407,268+- and E=2,674,135+-); thence in a northwesterly direction to point "S" on said map (N=407,460+- and E=2,674,095+-); thence along and with the existing county line to Point "T" on said map (N=415,370+- and E=2,691,805+-); thence in a northerly direction to point "U" on said map (N=415,450+- and E=2,691,775+-); thence in an easterly direction to point "V" on said map (N=415,660+- and E=2,691,947+-); thence in an easterly direction to a point in the Atlantic Intracoastal Waterway (Adam's Creek Canal) which point is labeled point "W" on said map (N=415,655+- and E=2,692,170+-); thence with the centerline of the Atlantic Intracoastal Waterway in a north-northeasterly direction to point "X", which point "X" is a point in the existing Carteret-Craven County boundary line (N=431,130+- and E=2,701,070+-).~~

said point being designated and shown as point 'A' on a plat consisting of six sheets entitled: 'Survey of: Carteret/Craven County line'; dated: May 16, 1994; as surveyed by: Alan Bell Surveying; said plat to be filed with the Register of Deeds in Carteret County and Craven County. All coordinates on said plat and shown herein are based on the North Carolina grid coordinate system using North American Datum of 1983 and are in units of U.S. survey feet. The said point of Beginning having coordinates of: (N:391,847.3104, E:2,576,786.9073). Thence from the above described point of Beginning South 89 degrees 39 minutes 12 seconds East 21.53 feet to a new county line monument shown as point 'B' on said plat; point 'B' having coordinates of: (N:391,847.1837, E:2,576,808.4425); thence continuing a straight line South 89 degrees 39 minutes 12 seconds East 997.38 feet to a new county line monument shown as point 'C' on said plat; point 'C' having coordinates of: (N:391,841.1479, E:2,577,805.7996); thence continuing a straight line South 89 degrees 39 minutes 12 seconds East 2511.47 feet to an old existing iron pipe and being shown as point 'D' on said plat; point 'D' having coordinates of: (N:391,825.9582, E: 2,580,317.2197); thence continuing a straight line

South 89 degrees 39 minutes 12 seconds East 30,173.66 feet to a new United States Forest Service standard aluminum iron pipe with cap and being shown as point 'E' on said plat; point 'E' having coordinates of: (N:391,643.4326, E:2,610,490.3270); thence North 87 degrees 56 minutes 36 seconds East 3,475.67 feet to an existing United States Forest Service standard aluminum iron pipe with cap and shown as point 'F' on said plat; point 'F' having coordinates of: (N:391,769.1747, E:2,613,963.7189); thence North 02 degrees 12 minutes 25 seconds West 5,620.49 feet to another existing United States Forest Service standard aluminum iron pipe with cap and shown as point 'G' on said plat; point 'G' having coordinates of: (N:397,385.4946, E: 2,613,747.2760); thence North 77 degrees 16 minutes 50 seconds East 2,966.14 feet to another existing United States Forest Service standard aluminum iron pipe with cap and shown as point 'H' on said plat; point 'H' having coordinates of: (N:398,038.5684, E:2,616,640.6238); thence continuing a straight line North 77 degrees 16 minutes 50 seconds East 19,149.46 feet to a new county line monument in the western margin of U.S. Highway 70 and shown as point 'I' on said plat; point 'I' having coordinates of: (N:402,254.8311, E:2,635,320.1591); thence continuing a straight line North 77 degrees 16 minutes 50 seconds East 112.10 feet to a new county line monument in the physical centerline of U.S. Highway 70 and shown as point 'J' on said plat; point 'J' having coordinates of: (N:402,279.5126, E: 2,635,429.5072); thence along the physical centerline of U.S. Highway 70 in a northerly direction the following: North 13 degrees 47 minutes 04 seconds West 224.53 feet to a point; thence North 05 degrees 07 minutes 44 seconds West 197.66 feet to a point; thence North 00 degrees 34 minutes 26 seconds West 184.83 feet to a point; thence North 00 degrees 26 minutes 22 seconds East 1,123.19 feet to a point; thence North 02 degrees 36 minutes 55 seconds West 177.28 feet to a point; thence North 06 degrees 01 minutes 19 seconds West 181.59 feet to a point; thence North 10 degrees 08 minutes 08 seconds West 217.14 feet to a point; thence North 14 degrees 24 minutes 47 seconds West 211.20 feet to a point; thence North 18 degrees 00 minutes 25 seconds West 220.65 feet to a new P-K nail in the center of a crossover; thence North 23 degrees 27 minutes 32 seconds West 288.49 feet to a new county line monument in the physical centerline of U.S. Highway 70 and shown as point 'K' on said plat; point 'K' having coordinates of: (N: 405,252.8869, E: 2,635,064.1234); thence leaving the physical centerline of U.S. Highway 70 North 87 degrees 38 minutes 04 seconds East 133.59 feet to a new county line monument in the eastern margin of U.S. Highway 70 and shown as point 'L' on said plat; point 'L' having coordinates of: (N: 405,258.4009, E: 2,635,197.5966); thence continuing a straight line North 87 degrees 38 minutes 04 seconds East 33,306.69 feet to a new county line monument shown as point 'M' on said plat; point 'M' having coordinates of: (N: 406,633.1803, E: 2,668,475.8998); thence North 63 degrees 00 minutes 03 seconds East 1,776.83 feet to a new county line monument shown as point 'N' on said plat; point 'N' having coordinates of: (N: 407,439.8189, E: 2,670,059.0787); thence South 67 degrees 55 minutes 28 seconds East 541.78 feet to a new county line monument shown as point 'O' on said plat; point 'O' having coordinates of: (N: 407,123.4556, E: 2,670,839.1458);

thence North 74 degrees 30 minutes 48 seconds East 526.87 feet to a new county line monument shown as point 'P' on said plat; point 'P' having coordinates of: (N: 407,263.8717, E: 2,671,345.9257); thence South 35 degrees 54 minutes 44 seconds East 716.23 feet to a new county line monument shown as point 'Q' as said plat; point 'Q' having coordinates of: (N: 406,683.7859, E: 2,671,766.0284); thence North 53 degrees 52 minutes 28 seconds East 230.24 feet to a new county line monument in the western right of way line of N.C. Highway 101 (100' R/W) and shown as point 'R' on said plat; point 'R' having coordinates of: (N: 406,819.5269, E: 2,671,952.0005); thence North 54 degrees 09 minutes 48 seconds East 99.99 feet to a new county line monument in the eastern right of way line of said N.C. Highway 101 and shown as point 'S' on said plat; point 'S' having coordinates of: (N: 406,878.0698, E: 2, 672,033.0627); thence North 75 degrees 44 minutes 21 seconds East 455.96 feet to a new county line monument shown as point 'T' on said plat; point 'T' having coordinates of: (N: 406,990.3881, E: 2,672,474.9684); thence South 17 degrees 49 minutes 46 seconds East 396.38 feet to a new county line monument in the northern right of way line of N.C. S.R. 1392 (60' R/W) and shown as point 'U' on said plat; point 'U' having coordinates of: (N: 406,613.0434, E: 2,672,596.3341); thence continuing a straight line south 17 degrees 49 minutes 46 seconds East 30.70 feet to an existing P-K nail in the centerline of N.C.S.R. 1392 and shown as point 'V' on said plat; point "V" having coordinates of: (N:406,583.8140, E:2,672,605.7352); thence North 58 degrees 59 minutes 03 seconds East 991.68 feet to a new county line monument in the eastern right of way line of N.C.S.R. 1391 (60'R/W) and shown as point 'W' on said plat; point 'W' having coordinates of: (N:407,094.8029, E:2,673,455.6318); thence North 74 degrees 30 minutes 32 seconds East 379.91 feet to a new county line monument shown as point 'X' on said plat; point 'X' having coordinates of: (N:407,196.2733, E:2,673,821.7438); thence North 76 degrees 56 minutes 33 seconds East 436.34 feet to a new county line monument shown as point 'Y' on said plat; point 'Y' having coordinates of: (N:407,294.8660, E:2,674,246.8052); thence North 25 degrees 06 minutes 38 seconds West 94.95 feet to a new county line monument shown as point 'Z' on said plat; point 'Z' having coordinates of: (N:407,380.8365, E:2,674,206.5097); thence North 65 degrees 43 minutes 56 seconds East 19,415.25 feet to a new county line monument shown as point 'AA' on said plat; point 'AA' having coordinates of: (N:415,360.5431, E:2,691,906.1190); thence North 05 degrees 58 minutes 05 seconds West 301.43 feet to a new county line monument shown as point 'BB' on said plat; point 'BB' having coordinates of: (N:415,660.3399, E:2,691,874.7779); thence North 05 degrees 33 minutes 22 seconds West 363.55 feet to a new county line monument shown as point 'CC' on said plat; point 'CC' having coordinates of: (N:416,022.1791, E:2,691,839.5793); thence North 85 degrees 18 minutes 11 seconds East 152.07 feet to a new county line monument shown as point 'DD' on said plat; point 'DD' coordinates of: (N:416,034.6314, E:2,691,991.1385); thence continuing a straight line North 85 degrees 18 minutes 11 seconds East 250.00 feet to the centerline of the Atlantic Intracoastal Waterway (Adams Creek Canal); thence along the centerline of the Atlantic Intracoastal

Waterway in a northerly direction to a point in the existing Carteret and Craven County line shown as point 'FF' on said plat; point 'FF' having coordinates of: (N:431,099+-, E:2,700,639+-). All bearings are relative to N.C. grid North (NAD 1983). All measurements are grid distances."

Section 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 21st day of July, 1998.

Became law on the date it was ratified.

H.B. 1661

SESSION LAW 1998-50

AN ACT TO CLARIFY THE AUTHORITY OF THE CITY OF DURHAM TO PROVIDE STATIONARY CONTAINER SERVICE TO HOUSING UNITS THAT QUALIFY FOR ROLL OUT CART SERVICE WITHOUT CHARGING ADDITIONAL FEES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 160A-314 reads as rewritten:

"§ 160A-314. *Authority to fix and enforce rates.*

(a) A city may establish and revise from time to time schedules of rents, rates, fees, charges, and penalties for the use of or the services furnished by any public enterprise. Schedules of rents, rates, fees, charges, and penalties may vary according to classes of service, and different schedules may be adopted for services provided outside the corporate limits of the city.

(a1) Before it establishes or revises a schedule of rates, fees, charges, or penalties for structural and natural stormwater and drainage systems under this section, the city council shall hold a public hearing on the matter. A notice of the hearing shall be given at least once in a newspaper having general circulation in the area, not less than seven days before the public hearing. The hearing may be held concurrently with the public hearing on the proposed budget ordinance.

The fees established under this subsection must be made applicable throughout the area of the city. Schedules of rates, fees, charges, and penalties for providing structural and natural stormwater and drainage system service may vary according to whether the property served is residential, commercial, or industrial property, the property's use, the size of the property, the area of impervious surfaces on the property, the quantity and quality of the runoff from the property, the characteristics of the watershed into which stormwater from the property drains, and other factors that affect the stormwater drainage system. Rates, fees, and charges imposed under this subsection may not exceed the city's cost of providing a stormwater and drainage system.

No stormwater utility fee may be levied under this subsection whenever two or more units of local government operate separate structural and natural stormwater and drainage system services in the same area within a county. However, two or more units of local government may allocate among themselves the functions, duties, powers, and responsibilities for jointly operating a single structural and natural stormwater and drainage system service in the same area within a county, provided that only one unit

may levy a fee for the service within the joint service area. For purposes of this subsection, a unit of local government shall include a regional authority providing structural and natural stormwater and drainage system services.

(a2) A fee for the use of a disposal facility provided by the city may vary based on the amount, characteristics, and form of recyclable materials present in solid waste brought to the facility for disposal. This section does not prohibit a city from providing aid to low-income persons to pay all or part of the cost of solid waste management services for those persons.

(a3) Where housing units qualify under city ordinances for roll out cart solid waste collection service and the housing units instead choose to be served by stationary containers in accordance with city ordinances, a city may provide stationary container collection service without charging fees for such service other than the fees applicable to roll out cart service.

(a4) Nothing in this section shall be construed to impair the authority of a city to charge customers who do not qualify for service under subsection (a3) of this section the fees established by city ordinances for stationary container collection service.

(b) A city shall have power to collect delinquent accounts by any remedy provided by law for collecting and enforcing private debts, and may specify by ordinance the order in which partial payments are to be applied among the various enterprise services covered by a bill for the services. A city may also discontinue service to any customer whose account remains delinquent for more than 10 days. When service is discontinued for delinquency, it shall be unlawful for any person other than a duly authorized agent or employee of the city to do any act that results in a resumption of services. If a delinquent customer is not the owner of the premises to which the services are delivered, the payment of the delinquent account may not be required before providing services at the request of a new and different tenant or occupant of the premises, but this restriction shall not apply when the premises are occupied by two or more tenants whose services are measured by the same meter.

(c) Except as provided in subsection (d) and G.S. 160A-314.1, rents, rates, fees, charges, and penalties for enterprisory services shall be legal obligations of the person contracting for them, and shall in no case be a lien upon the property or premises served, provided that no contract shall be necessary in the case of structural and natural stormwater and drainage systems.

(d) Rents, rates, fees, charges, and penalties for enterprisory services shall be legal obligations of the owner of the premises served when:

- (1) The property or premises is leased or rented to more than one tenant and services rendered to more than one tenant are measured by the same meter.
- (2) Charges made for use of a sewage system are billed separately from charges made for the use of a water distribution system.

(e) Nothing in this section shall repeal any portion of any city charter inconsistent herewith."

Section 2. This act applies to the City of Durham only.

Section 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 21st day of July, 1998.

Became law on the date it was ratified.

S.B. 1103

SESSION LAW 1998-51

AN ACT TO ADD CERTAIN DESCRIBED PROPERTY TO THE CORPORATE LIMITS OF THE TOWN OF FRANKLIN.

The General Assembly of North Carolina enacts:

Section 1. The following described property is added to the corporate limits of the Town of Franklin:

BEGINNING at a point on the Existing Primary Corporate Limit, Town of Franklin, N.C., said point also being on the western property line of parcel 2662 as shown on Macon County property map 6584.12; thence running from said point with said property line in a southern direction 160' to the southwestern property corner of said parcel 2662; thence running from said southwestern property corner with the southern property line of said parcel 2662 in a southeast direction 80' to a point in the western right-of-way of US Hwy. 23/441, said point also being the southeast property corner of said parcel 2662; thence running from said point with said western right-of-way in a southwest direction 400' to a point; thence leaving said western right-of-way line and continuing on the same course in a straight line 840' to a point where the straight line again intersects the western right-of-way line of said US Hwy. 23/441, said straight line also crossing US Hwy. 64, said point also being the northernmost corner of parcel 6840 and also being on the Existing Satellite Corporate Limit, Town of Franklin, N.C., as shown on Macon County property map 6584.16; thence running from said northernmost property corner with the western property line of said parcel 6840 and the Existing Satellite Corporate Limit, Town of Franklin, N.C., said line and said limit being one in the same, and running in a southwestern direction to a point in the western right-of-way of Dryman Road (SR 1156), said point also being the southernmost property corner of said parcel 6840 as shown on Macon County property map 6584.15; thence running from said property corner with the same course 35' to a point in the center of Dryman Road (SR 1156); thence running with the center of Dryman Road (SR 1156) in a northeast direction 225' to a point, said center of Dryman Road (SR 1156) also being the Existing Satellite Corporate Limit, Town of Franklin, N.C.; thence continuing from said point in a southern direction 30' to a point in the eastern right-of-way of Dryman Road (SR 1156), said point also being the northwest property corner of parcel 6068 as shown on Macon County property map 6584.16; thence running from said northwest property corner with the western property line of said parcel 6068 in a southern direction to the southwest property corner, said western property line also being the Existing Satellite Corporate Limit, Town of Franklin, N.C., and said southwest property corner also being on the northern property line of parcel 6835; thence leaving the Existing Satellite Corporate Limit, Town of Franklin, N.C., and running from said southwest property corner with said northern property line in a northwest direction 45'

to the northwest property corner of said parcel 6835; thence running from said northwest property corner with the western property line of parcels 6835 and 6623 in a southeast direction 495' to a property corner, said property corner being the northwest property corner of parcel 5495 as shown on Macon county property map 6584.20, said parcel 5495 also being the Existing Satellite Corporate Limit, Town of Franklin, N.C.; thence running from said northwest property corner with the western property line of said parcel 5495 in a southern direction 100' to the southwest property corner of said parcel 5495, said southwest property corner also being in the northern property line of parcel 5333; thence leaving the Existing Satellite Corporate Limit, Town of Franklin, N.C., and running with a portion of said northern property line and the western property line of said parcel 5333 in a southern direction 130' to the southwest property corner of said parcel 5333; thence running from said southwest property corner with the southern property line of parcels 5333 and 6303 in an easterly direction 130' to the southeast property corner of said parcel 6303, said southeast property corner being in the western right-of-way of Old Georgia Road (SR 1152); thence running from said southeast property corner with said western right-of-way in a southern, western and southern direction 1,000' \pm to a point in the center of Cartoogechaye Creek; thence running from said point with the center of Cartoogechaye Creek in a southeast direction 800' downstream to a point, said point being the intersection of the center of Cartoogechaye Creek and the eastern right-of-way of US Highway 23/441, said point being shown on Macon County property map 6584.20; thence running from said point of intersection with the eastern right-of-way of US Hwy. 23/441 in a northeast direction 515' to a point, said point also being the southwest property corner of parcel 3201 as shown on Macon County property map 6584.20; thence running from said property corner with the southern property line of said parcel 3201 in a southeast direction to a point in the western right-of-way of Allman Drive (SR 1687); thence continuing on the same course 30' to a point in the center of Allman Drive (SR 1687); thence running from said point with the center of Allman Drive (SR 1687) in a northwest direction 975' \pm to a point, said point being the beginning of a portion of the Existing Satellite Corporate Limit, Franklin, N.C.; thence continuing with the center of Allman Drive (SR 1687) and the Existing Satellite Corporate Limit, Franklin, N.C., 675' \pm to a point, said point being perpendicular to the southeast property corner of parcel 9087 as shown on Macon County property map 6584.16; thence leaving said Existing Satellite Corporate Limit, Franklin, N.C., and running from said point in a northern direction 30' to said southeast property corner of parcel 9087; thence running from said southeast property corner with the eastern property line of parcel 9087 in a northern direction 185' to the northeast property corner of parcel 9087; thence running from said northeast property corner with the northern property line of parcel 9087 in a western direction 170' to a property corner, said property corner also being in the eastern right-of-way of US Hwy. 23/441; thence running from said property corner with said eastern right-of-way in a northeast direction 470' to the southeast property corner of parcel 0657, said property corner also being in the northern right-of-way of Siler Road (SR 1660); thence running from said southeast corner with the

eastern property line and the northern right-of-way of Siler Road (SR 1660), both being one and the same, and running in a northeast direction 180' to the eastern property corner of parcel 0657; thence running from said eastern property corner with the northern property line of parcel 0657 in a northwest direction 200' to a property corner in the eastern right-of-way of US Hwy. 23/441; thence running from said property corner with the said right-of-way of US Hwy. 23/441 in a northeast direction 50' to a point; thence running from said point and leaving said eastern right-of-way line and running a straight line in a northeast direction 1,300' \pm to a point where the straight line again intersects the eastern right-of-way of said US Hwy. 23/441, said straight line also crossing US Hwy. 23/441/64, and said point also being shown on Macon County property map 6584.12; thence running from said point with the said eastern right-of-way of US Hwy. 23/441 in a northeast direction 440' \pm to the Existing Primary Corporate Limit, Town of Franklin, N.C.; thence running with said Existing Primary Corporate Limit in a northwest direction to point of BEGINNING.

Section 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 22nd day of July, 1998.

Became law on the date it was ratified.

S.B. 1399

SESSION LAW 1998-52

AN ACT TO ALLOW THE CITY OF DURHAM TO PARTICIPATE IN THE COST OF STORM DRAINAGE IMPROVEMENTS ON PRIVATE PROPERTY AND TO ALLOW PRIVATE PARTIES TO PAY OVER TIME FOR THEIR PORTION OF THE COST OF THE IMPROVEMENTS.

The General Assembly of North Carolina enacts:

Section 1. The Charter of the City of Durham, being Chapter 671 of the 1975 Session Laws, as amended, is amended by adding the following new section:

"Section 34. **Repairs to Stormwater System Located on Private Property.**

(a) The city is authorized to use funds collected from stormwater fees to participate in the cost of repairs, improvements, and maintenance to the stormwater system located on private property within the city, and to enact ordinances that allocate the private and public share of the cost of such activities. Upon written request by the property owner, the city is also authorized to allow the private share of the cost, with interest at a rate to be fixed by the city council but not to exceed nine percent (9%) per annum, to be paid over a period of time to be fixed by the city council but not to exceed 10 years. The unpaid portion owed to the city by the property owner shall become a lien on the real property, and may be collected in the same manner and using the same procedures by which the city collects delinquent personal or real property taxes. Any such lien shall be inferior to all prior and subsequent liens for federal, state, and local taxes, equal to liens of special assessments, and superior to all other liens and encumbrances.

(b) The authority granted by this section is in addition to and not in derogation of any other authority granted to the city by this charter or any other law."

Section 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 22nd day of July, 1998.

Became law on the date it was ratified.

S.B. 1410

SESSION LAW 1998-53

AN ACT TO ALLOW THE TOWN BOARD TO ANNEX AN AREA TO THE TOWN OF CHADBOURN.

The General Assembly of North Carolina enacts:

Section 1. The corporate limits of the Town of Chadbourn are extended to include the following described area:

BEGINNING at a point in a Northern line of the city limits of the Town of Chadbourn, N.C., as set out on map of Town of Chadbourn, N.C. as recorded in Map Book 52 Page 50, said Point of Beginning being located North 89 degrees 54 minutes 00 seconds East from a point marked by a concrete monument where said Northern line of the city limits crosses Blake Road, and having N.C. Grid Coordinates N=212,121.54, E=2,049,423.43, an approximate distance by scale of 1,150 feet to a point in the center of a Dunn Swamp drainage canal as shown within Tract 4 of a map of a subdivision of the J. R. Blake Land as recorded in Map Book 8 Page 3, Columbus County Public Registry, thence with the center of said canal Northwestwardly, crossing U. S. Highway 76 an approximate distance by scale of 1,300 feet to a point in said canal, the First and Southern corner of a 35 acre tract of lands of now or formerly John Milton Mills Blake as set out in Deed Book 178 Page 436; thence with the First and Southeastern line of said lands of Blake, old course and distance cited as North 36 degrees East 14 chains and 50 links to Evergreen Public Road thence continuing Northeastwardly across said Road to the Western corner of lands of Haworth, Inc.'s 19.52 acre tract; thence Northeastwardly, cited bearing being North 33 degrees 48 minutes 40 seconds East, a distance of 830.40 feet to a point, the Western corner of lands of now or formerly A. P. Worley thence continuing Northeastwardly with a line of said lands of A. P. Worley, Jr. to a point in said line where same is intersected by a Westwardly projection of the Northern property line of lands of now or formerly Thomas Carson Powell as set out in Deed Book 376 Page 073; thence a cited bearing South 82 degrees 37 minutes East to, and then with, and beyond said Northern line of lands of Thomas C. Powell as shown on survey of same dated July 24, 1986 by Soles & Walker, P.A., Registered Land Surveyors, to a point marked by an old nail in the center of N.C. Hwy 410; thence Southwardly with the centerline of N.C. Hwy 410 an approximate distance by scale of 120 feet to a point where said centerline is intersected by a ditch along the Northern property line of lands of Harry Edward Reed, Jr., as set out in Deed Book 520 Page 225; thence to and with the Northern line of said lands of Reed, the cited course and distance

being North 89 degrees 15 minutes 49 seconds East, an approximate distance by scale of 1,000 feet to a point in said line at the intersection of ditches, thence Southwardly with a ditch leading through said lands of Reed, an approximate distance by scale of 1,050 feet to a point in a Southern line of lands of Reed, also a Northern line of lands of Horace Cox, thence Eastwardly along a ditch with the line between lands of Reed and Cox, an approximate distance by scale of 120 feet to a point, thence Southwardly along a ditch and beyond crossing U.S. Hwy 76 Bypass an approximate distance by scale of 1,300 feet to a point on the Southern Right-of-Way line of U.S. Hwy 76 Bypass, thence westwardly with the Southern Right-of-Way line of U.S. Hwy 76 Bypass, an approximate distance by scale of 530 feet to a point marked by an old iron in a ditch, the Northeastern corner of a 3.76 acre tract as set out on survey map entitled, "Survey for Alva G. Cole, Jr. and Carole Cole Bailey and Samuel D. Cole, Sr." dated by July 28, 1995 by Soles & Walker, P.A., Registered Land Surveyors; thence with the Eastern line of said 3.76 acre tract, cited bearing and distance being South 04 degrees 12 minutes 37 seconds West, 373.40 feet to a point marked by an iron in a ditch, thence with said ditch or canal in a Southeastwardly and then Southwardly direction, through lands of Wanda McClelland Barfield as shown on survey map entitled, "Survey for Wanda McClelland Barfield" dated December 03, 1996 by Soles & Walker, P.A., Registered Land Surveyors, and continuing Southwardly along the center of said canal, an approximate distance by scale from the Southeast line of Barfield, 200 feet to a point in an existing Northern city limit line, bearing North 89 degrees 54 minutes 00 seconds East, an approximate distance by scale of 650 feet Eastwardly from N.C. Hwy 410; thence in a generally Westwardly direction with the existing city limit lines of the Town of Chadbourn, N.C. as set out on aforementioned map of Town of Chadbourn, N.C., as recorded in Map Book 52 Page 50 to the Point of Beginning, containing, by scale, 196.00 acres, more or less.

There is excepted herefrom all of that certain tract containing approximately 5.1 acres, more or less, designated "Annexed Area "A" on aforesaid map of Chadbourn, N.C. as recorded in Map Book 52 Page 50.

BEGINNING at a point in a Eastern line of the city limits of Chadbourn, N.C. as set out on Map of Town of Chadbourn, N.C., as recorded in Map Book 52 Page 50 said point of beginning being located South 00 degrees 06 minutes 00 seconds East from a point marked by a concrete monument where said Eastern line of the city limits crosses Old U.S. Hwy. 74-76 (Strawberry Boulevard), and having N.C. Grid Coordinates N=209,637.11, E=2,056,138.84, an approximate distance by scale of 600 feet to a point where said city limit line is intersected by the center of the existing Soules Swamp Chadbourn Watershed Canal; thence Eastwardly with the center of said Chadbourn Watershed Canal an approximate distance by scale of 5,000 feet to a point in the centerline of paved S.R. 1005, thence with the centerline of said S.R. 1005 Northwardly, crossing Old U.S. Hwy 74-76, an approximate total distance by scale of 1,350 feet to a point where said S.R. 1005 crosses a ditch; thence to and with said ditch in a West-

Northwest direction an approximate distance by scale of 600 feet, crossing lands of Mrs. Cecil Fitz to a point in a Western line of lands of said Fitz lands; thence continuing with said ditch Northwestwardly to its intersection with the Northern line of lands of now or formerly Chadbourne Tobacco Warehouse as recorded in Deed Book 293 Page 544; thence with the Northern line of said tract in a Westwardly direction to the Northwest corner of said tract also in Eastern line of lands of now or formerly J.S. Singletary and Lucian P. Stephens as set out in deed recorded in Deed Book 370 Page 956; thence Southwardly with said Eastern line of lands of said Singletary and Stephens, and then lands of Jesse Densil Worthington as set out in deed recorded in Deed Book 402 Page 378, an approximate total distance by scale of 650 feet to a point in said line normal to and 350 feet Northwardly from the centerline of Old U.S. Hwy 74-76; thence Westwardly 350 feet normal to and Northwardly from the centerline of Old U.S. Hwy 74-76, an approximate distance by scale of 2,000 feet to a point in the eastern line of lands of Chadbourne Cemetery as set out on map entitled, "Map of Chadbourne Cemetery" dated October 25, 1971, by Willis & Walker, Registered Land Surveyors; thence with said line of Chadbourne Cemetery, also a Western line of lands of Frederick Boege, Jr. as set out in deed recorded in Deed Book 389 Page 874, Northwardly, an approximate distance by scale of 500 feet to a point, the Northeastern corner of said lands of Chadbourne Cemetery; thence Westwardly with the Northern line of said lands of Chadbourne Cemetery, along a ditch, an approximate distance by scale of 500 feet to the Northwestern corner of said lands of Chadbourne Cemetery, thence a new line in a Westwardly projection of said Northern line of said lands of Chadbourne Cemetery, an approximate distance by scale of 850 feet to a new point in the center of an existing Chadbourne Watershed Drainage Canal; thence Northwardly with the center of said canal, an approximate distance by scale of 650 feet to a point, a corner of the existing city limits of the Town of Chadbourne, N.C., said point being a the terminus of line L18 on aforementioned map as recorded in Map Book 52 Page 50; thence with an existing city limit line North 83 degrees 05 minutes 06 seconds West 486.87 feet to a point marked by an iron pipe; thence with an existing city limit line South 00 degrees 06 minutes 00 seconds East an approximate distance by scale of 1,900 feet to the Point of Beginning, containing, by scale, 127.00 acres, more or less.

Section 2. Section 1 of this act becomes effective only by adoption of an ordinance by the Town of Chadbourne.

Section 3. Real and personal property in the territory annexed pursuant to this act is subject to municipal taxes as provided in G.S. 160A-58.10.

Section 4. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 22nd day of July, 1998.

Became law on the date it was ratified.

S.B. 1451

SESSION LAW 1998-54

AN ACT TO REPEAL THE CHARTER OF THE VILLAGE OF SLOOP POINT.

The General Assembly of North Carolina enacts:

Section 1. Chapter 643 of the 1995 Session Laws is repealed.

Section 2. This act is effective when it becomes law, except that the governing board of the Village of Sloop Point as of that date is continued in office for 30 days thereafter for the sole purpose of liquidating the assets and liabilities of the Village and filing any financial reports that may be required by law. Any net assets of the Village shall be paid over to Pender County, which shall use those funds for some public purpose.

In the General Assembly read three times and ratified this the 22nd day of July, 1998.

Became law on the date it was ratified.

S.B. 1569

SESSION LAW 1998-55

AN ACT (1) TO ALLOW CERTAIN RECYCLING FACILITIES AN INVESTMENT TAX CREDIT, A REFUNDABLE INCOME TAX CREDIT, A SALES TAX REDUCTION FOR CRANES AND MATERIALS HANDLING EQUIPMENT, A SALES TAX REFUND FOR CONSTRUCTION MATERIALS, A SALES TAX EXEMPTION FOR ELECTRICITY, AND A PROPERTY TAX EXEMPTION FOR RECYCLING PROPERTY; (2) TO ALLOW AIR COURIERS A SALES TAX REDUCTION FOR MATERIALS HANDLING EQUIPMENT USED AT A HUB, A SALES TAX EXEMPTION FOR AIRCRAFT LUBRICANTS AND PARTS USED AT A HUB, AND A PROPERTY TAX EXEMPTION FOR AIRCRAFT USED AT A HUB; (3) TO EXPAND THE INDUSTRIAL DEVELOPMENT FUND AND UTILITY ACCOUNT TO INCLUDE THE SAME BUSINESSES AS THE WILLIAM S. LEE ACT, TO EXPAND THE UTILITY ACCOUNT TO TIER TWO COUNTIES, TO RAISE THE MAXIMUM GRANT UNDER THE INDUSTRIAL DEVELOPMENT FUND, AND TO ALLOW LOCAL GOVERNMENTS TO USE PART OF THE INDUSTRIAL DEVELOPMENT FUND GRANT FUNDS TO ADMINISTER THE GRANT; (4) TO PROVIDE FOR THE DESIGNATION OF STATE DEVELOPMENT ZONES, TO PROVIDE A LOWER WAGE STANDARD, A HIGHER WORKER TRAINING CREDIT, A ZERO THRESHOLD FOR THE INVESTMENT TAX CREDIT, AND AN ADDITIONAL JOBS TAX CREDIT WITHIN ZONES, AND TO GIVE ZONES PRIORITY FOR COMMUNITY DEVELOPMENT BLOCK GRANTS; AND (5) TO AMEND THE WILLIAM S. LEE ACT BY EXPANDING THE CENTRAL ADMINISTRATIVE OFFICE CREDIT TO GROSS PREMIUMS TAXES AND TO JOBS CREATED BEFORE THE PROPERTY IS CONSTRUCTED, BY PROVIDING THAT THE INVESTMENT TAX CREDIT THRESHOLD APPLIES ONLY ONCE FOR A TWO-YEAR

PROJECT, BY EXPANDING THE INVESTMENT TAX CREDIT TO OPERATING LEASES FOR PROJECTS OVER ONE HUNDRED FIFTY MILLION DOLLARS, BY EXPANDING THE RESEARCH AND DEVELOPMENT TAX CREDIT, BY SIMPLIFYING THE WORKER TRAINING TAX CREDIT, BY IMPOSING A FEE FOR INCENTIVE APPLICANTS, BY EXTENDING THE CREDIT CARRYFORWARD PERIOD FOR PROJECTS OVER ONE HUNDRED FIFTY MILLION DOLLARS, BY PROVIDING FOR A SINGLE TIER DESIGNATION FOR TWO-COUNTY INDUSTRIAL PARKS, BY CLARIFYING THAT CREDITS ARE ALLOWED FOR BUSINESSES THAT ARE SOLD ONLY IF THERE IS IMMINENT CLOSURE OR AN EMPLOYEE BUYOUT, BY CLARIFYING THE METHOD OF CALCULATING THE INVESTMENT TAX CREDIT FOR LEASES, AND BY CLARIFYING THE DEFINITIONS OF THE TYPES OF BUSINESSES ELIGIBLE FOR INCENTIVES.

The General Assembly of North Carolina enacts:

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PART I. BILL LEE ACT/DEVELOPMENT ZONES

Section 1. Article 3A of Chapter 105 of the General Statutes reads as rewritten:

"ARTICLE 3A.

"Tax Incentives for New and Expanding Businesses.

[Repealed effective January 1, 2002]

"§ 105-129.2. (*Repealed effective January 1, 2002 -- see note*) *Definitions.*

The following definitions apply in this Article:

- (1) Air courier services. -- ~~Defined in the Standard Industrial Classification Manual issued by the United States Office of Management and Budget.~~ A person is engaged in the air courier services business if the person's primary business is furnishing air delivery of individually addressed letters and packages for compensation, except by the United States Postal Service.
- (2) Central administrative office. -- Defined in the North American Industry Classification System adopted by the United States Office of Management and Budget.
- (3) Cost. -- In the case of property owned by the taxpayer, cost is determined pursuant to regulations adopted under section 1012 of the Code. In the case of property the taxpayer leases from another, cost is value as determined pursuant to G.S. 105-130.4(j)(2).
- (4) Data processing. -- Defined in the North American Industry Classification System adopted by the United States Office of Management and Budget.

- (5) Development zone. -- An area designated as a development zone pursuant to G.S. 105-129.3A.
- (6) Enterprise tier. -- The classification assigned to an area pursuant to G.S. 105-129.3.
- (7) Full-time job. -- A position that requires at least 1,600 hours of work per year and is intended to be held by one employee during the entire year. A full-time employee is an employee who holds a full-time job.
- (8) Reserved.
- (9) Large investment. -- Defined in G.S. 105-129.4(b1).
- (10) Machinery and equipment. -- Engines, machinery, tools, and implements used or designed to be used in the business for which the credit is claimed. The term does not include real property as defined in G.S. 105-273 or rolling stock as defined in G.S. 105-333.
- (11) Manufacturing. -- Defined in the North American Industry Classification System adopted by the United States Office of Management and Budget.
- (12) Purchase. -- Defined in section 179 of the Code.
- (13) Warehousing and wholesale trade. -- Defined in the North American Industry Classification System adopted by the United States Office of Management and Budget.
- ~~(1a) Central administrative office. -- Defined in the Standard Industrial Classification Manual issued by the United States Office of Management and Budget.~~
- ~~(1b) Cost. -- Determined pursuant to regulations adopted under section 1012 of the Code.~~
- ~~(2) Data processing. -- Defined in the Standard Industrial Classification Manual issued by the United States Office of Management and Budget.~~
- ~~(3) Enterprise tier. -- The classification assigned to an area pursuant to G.S. 105-129.3.~~
- ~~(4) Full-time job. -- A position that requires at least 1,600 hours of work per year and is intended to be held by one employee during the entire year. A full-time employee is an employee who holds a full-time job.~~
- ~~(4a) Reserved.~~
- ~~(5) Machinery and equipment. -- Engines, machinery, tools, and implements that are capitalized by the taxpayer for tax purposes under the Code and are used or designed to be used in the business for which the credit is claimed. The term does not include real property as defined in G.S. 105-273 or rolling stock as defined in G.S. 105-333.~~
- ~~(6) Manufacturing and processing. -- Defined in the Standard Industrial Classification Manual issued by the United States Office of Management and Budget.~~
- ~~(7) Purchase. -- Defined in section 179 of the Code.~~

- ~~(8) Warehousing and distribution. -- Defined in the Standard Industrial Classification Manual issued by the United States Office of Management and Budget.~~

"§ 105-129.3. (Repealed effective January 1, 2002) Enterprise tier designation.

(a) Tiers Defined. -- An enterprise tier one area is a county whose enterprise factor is one of the 10 highest in the State. An enterprise tier two area is a county whose enterprise factor is one of the next 15 highest in the State. An enterprise tier three area is a county whose enterprise factor is one of the next 25 highest in the State. An enterprise tier four area is a county whose enterprise factor is one of the next 25 highest in the State. An enterprise tier five area is any area that is not in a lower-numbered enterprise tier.

(b) Annual Designation. -- Each year, on or before December 31, the Secretary of Commerce shall assign to each county in the State an enterprise factor that is the sum of the following:

- (1) The county's rank in a ranking of counties by average rate of unemployment from lowest to highest, for the preceding three years.
- (2) The county's rank in a ranking of counties by average per capita income from highest to lowest, for the preceding three years.
- (3) The county's rank in a ranking of counties by percentage growth in population from highest to lowest.

The Secretary of Commerce shall then rank all the counties within the State according to their enterprise factor from highest to lowest, identify all the areas of the State by enterprise tier, and provide this information to the Secretary of Revenue. An enterprise tier designation is effective only for the calendar year following the designation.

In measuring rates of unemployment and per capita income, the Secretary shall use the latest available data published by a State or federal agency generally recognized as having expertise concerning the data. In measuring population growth, the Secretary shall use the most recent estimates of population certified by the State Planning Officer.

(c) Exception for Enterprise Tier One Areas. -- Notwithstanding the provisions of this section, an enterprise tier one area may not be redesignated as a higher-numbered enterprise tier area until it has been an enterprise tier one area for at least two consecutive years.

(d) Exception for Two-County Industrial Park. -- For the purpose of this Article, an eligible two-county industrial park that meets all of the following conditions has the lower enterprise tier designation of the designations of the two counties in which it is located:

- (1) It is located in two contiguous counties, one of which has a lower enterprise tier designation than the other.
- (2) At least one-third of the park is located in the county with the lower tier designation.
- (3) It is owned by the two counties or a joint agency of the counties.
- (4) The county with the lower tier designation contributed at least one-half of the cost of developing the park.

"§ 105-129.3A. Development zone designation.

(a) Development Zone Defined. -- A development zone is an area comprised of one or more contiguous census tracts, census block groups, or both in the most recent federal decennial census that meets all of the following conditions:

- (1) It is located in whole or in part in a city with a population of more than 5,000 according to the most recent annual population estimates certified by the State Planning Officer.
- (2) It has a population of 1,000 or more according to the most recent annual population estimates certified by the State Planning Officer.
- (3) More than twenty percent (20%) of its population is below the poverty level according to the most recent federal decennial census.

(b) Designation. -- Upon request of a taxpayer or a local government, the Secretary of Commerce shall designate whether an area is a development zone that meets the conditions of subsection (a) of this section. A development zone designation is effective for 48 months following the designation.

(c) Relationship With Enterprise Tiers. -- For the purpose of the wage standard requirement of G.S. 105-129.3(b), the credit for investing in machinery and equipment allowed in G.S. 105-129.9, and the credit for worker training allowed in G.S. 105-129.11, a development zone is considered an enterprise tier one area. For all other purposes, a development zone has the same enterprise tier designation as the county in which it is located.

"§ 105-129.4. (Repealed effective January 1, 2002) Eligibility; forfeiture.

(a) Type of Business. -- A taxpayer is eligible for a credit allowed by G.S. 105-129.12 if the real property for which the credit is claimed is used for a central administrative office that creates at least 40 new jobs. A taxpayer is eligible for the other credits allowed by this Article if the taxpayer engages in one of the following types of businesses and the jobs with respect to which a credit is claimed are created in that business, the machinery and equipment with respect to which a credit is claimed are used in that business, and the research and development for which a credit is claimed are carried out as part of that business:

- (1) Air courier services.
- (2) Central administrative office that creates at least 40 new jobs.
- (3) Data processing.
- (4) ~~Manufacturing or processing.~~ Manufacturing.
- (5) Warehousing or ~~distribution.~~ wholesale trade.

(a1) Central Administrative Office. -- A central administrative office creates at least 40 new jobs if, during the taxable year the taxpayer first uses the property as a central administrative office, if the taxpayer hires at least 40 additional full-time employees to fill new positions at the office, office either in the year the taxpayer first uses the property as a central administrative office or in the preceding 24 months while using temporary space for the central administrative office functions during completion of the administrative office property. Jobs transferred from one area in the State to

another area in the State are not considered new jobs for purposes of this subsection.

(b) **Wage Standard.** -- A taxpayer is eligible for the credit for creating jobs or the credit for worker training if the jobs for which the credit is claimed meet the wage standard at the time the taxpayer applies for the credit. A taxpayer is eligible for the credit for investing in machinery and equipment, the credit for research and development, or the credit for investing in real property for a central administrative office if the jobs at the location with respect to which the credit is claimed meet the wage standard at the time the taxpayer applies for the credit. Jobs meet the wage standard if they pay an average weekly wage that is at least equal to the applicable percentage times the applicable average weekly wage for the county in which the jobs will be located, as computed by the Secretary of Commerce from data compiled by the Employment Security Commission for the most recent period for which data are available. The applicable percentage for jobs located in an enterprise tier one area is one hundred percent (100%). The applicable percentage for all other jobs is one hundred ten percent (110%). The applicable average weekly wage is the lowest of the following: (i) the average wage for all insured private employers in the county, (ii) the average wage for all insured private employers in the State, and (iii) the average wage for all insured private employers in the county multiplied by the county income/wage adjustment factor. The county income/wage adjustment factor is the county income/wage ratio divided by the State income/wage ratio. The county income/wage ratio is average per capita income in the county divided by the annualized average wage for all insured private employers in the county. The State income/wage ratio is the average per capita income in the State divided by the annualized average wage for all insured private employers in the State.

(b) Large Investment. -- A taxpayer who is otherwise eligible for a tax credit under this Article becomes eligible for the large investment enhancements provided for credits under this Article if the Secretary of Commerce certifies that the taxpayer will purchase or lease, and place in service in connection with the eligible business within a two-year period, at least one hundred fifty million dollars (\$150,000,000) worth of one or more of the following: real property, machinery and equipment, or central administrative office property. If the taxpayer fails to make the level of investment certified within this two-year period, the taxpayer forfeits the large investment enhancements as provided in subsection (d) of this section.

~~(c) Worker Training.~~ -- ~~A taxpayer is eligible for the tax credit for worker training only for training workers who occupy jobs for which the taxpayer is eligible to claim an installment of the credit for creating jobs or which are full-time positions at a location with respect to which the taxpayer is eligible to claim an installment of the credit for investing in machinery and equipment for the taxable year.~~

~~The credit for worker training is allowed only with respect to employees in positions not classified as exempt under the Fair Labor Standards Act, 29 U.S.C. § 213(a)(1) and for expenditures for training that would be eligible for expenditure or reimbursement under the Department of Community Colleges' New and Expanding Industry Program, as determined by~~

~~guidelines adopted by the State Board of Community Colleges. The credit is not allowed for expenditures that are paid or reimbursed by the New and Expanding Industry Program. To establish eligibility, the taxpayer must obtain as part of the application process under G.S. 105-129.6 the certification of the Department of Community Colleges that the taxpayer's planned worker training would satisfy the requirements of this paragraph. A taxpayer shall apply to the Department of Community Colleges for this certification. The application must be on a form provided by the Department of Community Colleges, must provide a detailed plan of the worker training to be provided, and must contain any information required by the Department of Community Colleges to determine whether the requirements of this paragraph will be satisfied. If the Department of Community Colleges determines that the planned worker training meets the requirements of this paragraph, the Department of Community Colleges shall issue a certificate describing the location with respect to which the credit is claimed and stating that the planned worker training meets the requirements of this paragraph. The State Board of Community Colleges may adopt rules in accordance with Chapter 150B of the General Statutes that are needed to carry out its responsibilities under this paragraph.~~

(d) Forfeiture. -- A taxpayer forfeits a credit allowed under this Article if the taxpayer was not eligible for the credit at the time the taxpayer applied for the credit. In addition, a taxpayer forfeits a large investment enhancement of a tax credit if the taxpayer fails to make the level of investment certified by the Secretary of Commerce under subsection (b1) of this section within the required two-year period. A taxpayer that forfeits a credit under this Article is liable for all past taxes avoided as a result of the credit plus interest at the rate established under G.S. 105-241.1(i), computed from the date the taxes would have been due if the credit had not been allowed. The past taxes and interest are due 30 days after the date the credit is forfeited; a taxpayer that fails to pay the past taxes and interest by the due date is subject to the penalties provided in G.S. 105-236. If a taxpayer forfeits the credit for creating jobs or the credit for investing in machinery and equipment, the taxpayer also forfeits any credit for worker training claimed for the jobs for which the credit for creating jobs was claimed or the jobs at the location with respect to which the credit for investing in machinery and equipment was claimed.

(e) Change in Ownership of Business. -- The sale, merger, acquisition, or bankruptcy of a business, or any ~~other~~ transaction by which an existing business reformulates itself as another business, does not create new eligibility in a succeeding business with respect to credits for which the predecessor was not eligible under this Article. A successor business may, however, take any installment of or carried-over portion of a credit that its predecessor could have taken if it had a tax liability. The acquisition of a business is a new investment that creates new eligibility in the acquiring taxpayer under this Article if any of the following conditions are met:

- (1) The business closed before it was acquired.
- (2) The business was required to file a notice of plant closing or mass layoff under the federal Worker Adjustment and Retraining Notification Act, 29 U.S.C. § 2102, before it was acquired.

(3) The business was acquired by its employees through an employee stock option transaction or another similar mechanism.

"§ 105-129.5. (Repealed effective January 1, 2002) Tax election; cap.

(a) Tax Election. -- The credits provided in this Article are allowed against the franchise tax levied in Article 3 of this Chapter and the income taxes levied in Article 4 of this Chapter. The credit for investing in central administrative office property provided in G.S. 105-129.12 is also allowed against the gross premiums tax levied in Article 8B of this Chapter. The taxpayer shall elect the tax against which a credit will be claimed when filing the return on which the first installment of the credit is claimed. This election is binding. Any carryforwards of the credit must be claimed against the same tax.

(b) Cap. -- The credits allowed under this Article may not exceed fifty percent (50%) of the tax against which they are claimed for the taxable year, reduced by the sum of all other credits allowed against that tax, except tax payments made by or on behalf of the taxpayer. This limitation applies to the cumulative amount of credit, including carryforwards, claimed by the taxpayer under this Article against each tax for the taxable year. Any unused portion of ~~the a credit with respect to a large investment may be carried forward for the succeeding five years.~~ 20 years. Any unused portion of any other credit may be carried forward for the succeeding five years.

"§ 105-129.6. (Repealed effective January 1, 2002) Application; reports.

(a) Application. -- To claim the credits allowed by this Article, the taxpayer must provide with the tax return the certification of the Secretary of Commerce that the taxpayer meets all of the eligibility requirements of G.S. 105-129.4 with respect to each credit. A taxpayer shall apply to the Secretary of Commerce for certification of eligibility. The application must be on a form provided by the Secretary of Commerce and must contain any information necessary for the Secretary of Commerce to determine whether the taxpayer meets the eligibility requirements. If the Secretary of Commerce determines that the taxpayer meets all of the eligibility requirements of G.S. 105-129.4 with respect to a credit, the Secretary shall issue a certificate describing the location with respect to which the credit is claimed, outlining the eligibility requirements for the credit, and stating that the taxpayer meets the eligibility requirements. If the Secretary of Commerce determines that the taxpayer does not meet all of the eligibility requirements of G.S. 105-129.4 with respect to a credit, the Secretary must advise the taxpayer in writing of the eligibility requirements the taxpayer fails to meet. The Secretary of Commerce may adopt rules in accordance with Chapter 150B of the General Statutes that are needed to carry out the Secretary of Commerce's responsibilities under this section.

(a) Fee. -- When filing an application for certification under this section, the taxpayer must pay the Department of Commerce a fee of seventy-five dollars (\$75.00). Fees collected under this subsection are receipts of the Department of Commerce.

(b) Reports. -- The Department of Commerce shall report to the Department of Revenue and to the Fiscal Research Division of the General Assembly by May 1 of each year the following information for the 12-month period ending the preceding April 1:

- (1) The number of applications for each credit allowed in this Article.
- (2) The number and enterprise tier area of new jobs with respect to which credits were applied for.
- (3) The cost of machinery and equipment with respect to which credits were applied for.
- (4) The number of new jobs created within development zones, and the percentage of those jobs that were filled by residents of the zones.

"§ 105-129.7. (Repealed effective January 1, 2002) Substantiation.

To claim a credit allowed by this Article, the taxpayer must provide any information required by the Secretary of Revenue. Every taxpayer claiming a credit under this Article shall maintain and make available for inspection by the Secretary of Revenue any records the Secretary considers necessary to determine and verify the amount of the credit to which the taxpayer is entitled. The burden of proving eligibility for the credit and the amount of the credit shall rest upon the taxpayer, and no credit shall be allowed to a taxpayer that fails to maintain adequate records or to make them available for inspection.

"§ 105-129.8. (Repealed effective January 1, 2002) Credit for creating jobs.

(a) Credit. -- A taxpayer that meets the eligibility requirements set out in G.S. 105-129.4, has five or more employees for at least 40 weeks during the taxable year, and hires an additional full-time employee during that year to fill a position located in this State is allowed a credit for creating a new full-time job. The amount of the credit for each new full-time job created is set out in the table below and is based on the enterprise tier of the area in which the position is ~~located~~ located. In addition, if the position is located in a development zone, the amount of the credit is increased by four thousand dollars (\$4,000) per job.

Area Enterprise Tier	Amount of Credit
Tier One	\$12,500
Tier Two	4,000
Tier Three	3,000
Tier Four	1,000
Tier Five	500

A position is located in an area if more than fifty percent (50%) of the employee's duties are performed in the area. The credit may not be taken in the taxable year in which the additional employee is hired. Instead, the credit shall be taken in equal installments over the four years following the taxable year in which the additional employee was hired and shall be conditioned on the continued employment by the taxpayer of the number of full-time employees the taxpayer had upon hiring the employee that caused the taxpayer to qualify for the credit.

If, in one of the four years in which the installment of a credit accrues, the number of the taxpayer's full-time employees falls below the number of full-time employees the taxpayer had in the year in which the taxpayer qualified for the credit, the credit expires and the taxpayer may not take any remaining installment of the credit. The taxpayer may, however, take the

portion of an installment that accrued in a previous year and was carried forward to the extent permitted under G.S. 105-129.5.

Jobs transferred from one area in the State to another area in the State shall not be considered new jobs for purposes of this section. If, in one of the four years in which the installment of a credit accrues, the position filled by the employee is moved to an area in a higher- or lower-numbered enterprise tier, or is moved from a development zone to an area that is not a development zone, the remaining installments of the credit shall be calculated as if the position had been created initially in the area to which it was moved.

(b) Repealed by Session Laws 1989, c. 111, s. 1.

(b1), (c) Repealed by Session Laws 1996, Second Extra Session, c. 13, s. 3.3.

(d) Planned Expansion. -- A taxpayer that signs a letter of commitment with the Department of Commerce to create at least twenty new full-time jobs in a specific area within two years of the date the letter is signed qualifies for the credit in the amount allowed by this section based on the area's enterprise tier and development zone designation for that year even though the employees are not hired that year. The credit shall be available in the taxable year after at least twenty employees have been hired if the hirings are within the two-year commitment period. The conditions outlined in subsection (a) apply to a credit taken under this subsection except that if the area is redesignated to a higher-numbered enterprise tier or loses its development zone designation after the year the letter of commitment was signed, the credit is allowed based on the area's enterprise tier and development zone designation for the year the letter was signed. If the taxpayer does not hire the employees within the two-year period, the taxpayer does not qualify for the credit. However, if the taxpayer qualifies for a credit under subsection (a) in the year any new employees are hired, the taxpayer may take the credit under that subsection.

(e), (f) Repealed by Session Laws 1996, Second Extra Session, c. 13, s. 3.3 for taxable years beginning on or after January 1, 1996.

"§ 105-129.9. (Repealed effective January 1, 2002) Credit for investing in machinery and equipment.

(a) Credit. -- If a taxpayer that has purchased or leased eligible machinery and equipment places it in service in this State during the taxable year, the taxpayer is allowed a credit equal to seven percent (7%) of the excess of the eligible investment amount over the applicable threshold. Machinery and equipment is eligible if it is capitalized by the taxpayer for tax purposes under the Code and is not leased to another party. In addition, in the case of a large investment, machinery and equipment that is not capitalized by the taxpayer is eligible if the taxpayer leases it from another party. The credit may not be taken for the taxable year in which the equipment is placed in service but shall be taken in equal installments over the seven years following the taxable year in which the equipment is placed in service.

(b) Eligible Investment Amount. -- The eligible investment amount is the lesser of (i) the cost of the eligible machinery and equipment and (ii) the amount by which the cost of all of the taxpayer's eligible machinery and

equipment that is in service in this State on the last day of the taxable year exceeds the cost of all of the taxpayer's eligible machinery and equipment that was in service in this State on the last day of the base year. The base year is that year, of the three immediately preceding taxable years, in which the taxpayer had the most eligible machinery and equipment in service in this State.

(c) Threshold. -- The applicable threshold is the appropriate amount set out in the following table based on the enterprise tier of the area where the eligible machinery and equipment are placed in service during the taxable year. If the taxpayer places eligible machinery and equipment in service in more than one area during the taxable year, the threshold applies separately to the eligible machinery and equipment placed in service in each area. If the taxpayer places eligible machinery and equipment in service in an area over the course of a two-year period, the applicable threshold for the second taxable year is reduced by the eligible investment amount for the previous taxable year.

Area Enterprise Tier	Threshold
Tier One	\$ -0-
Tier Two	100,000
Tier Three	200,000
Tier Four	500,000
Tier Five	1,000,000

(d) Expiration. -- If, in one of the seven years in which the installment of a credit accrues, the machinery and equipment with respect to which the credit was claimed are disposed of, taken out of service, or moved out of State, the credit expires and the taxpayer may not take any remaining installment of the credit. The taxpayer may, however, take the portion of an installment that accrued in a previous year and was carried forward to the extent permitted under G.S. 105-129.5.

If, in one of the seven years in which the installment of a credit accrues, the machinery and equipment with respect to which the credit was claimed are moved to an area in a higher-numbered enterprise tier, or are moved from a development zone to an area that is not a development zone, the remaining installments of the credit are allowed only to the extent they would have been allowed if the machinery and equipment had been placed in service initially in the area to which they were moved.

(e) Planned Expansion. -- A taxpayer that signs a letter of commitment with the Department of Commerce to place specific eligible machinery and equipment in service in an area within two years after the date the letter is signed may, in the year the eligible machinery and equipment are placed in service in that area, calculate the credit for which the taxpayer qualifies based on the area's enterprise tier and development zone designation for the year the letter was signed. All other conditions apply to the credit, but if the area has been redesignated to a higher-numbered enterprise tier or has lost its development zone designation after the year the letter of commitment was signed, the credit is allowed based on the area's enterprise tier and development zone designation for the year the letter was signed. If the taxpayer does not place part or all of the specified eligible machinery and equipment in service within the two-year period, the taxpayer does not

qualify for the benefit of this subsection with respect to the machinery and equipment not placed in service within the two-year period. However, if the taxpayer qualifies for a credit in the year the eligible machinery and equipment are placed in service, the taxpayer may take the credit for that year as if no letter of commitment had been signed pursuant to this subsection.

"§ 105-129.10. (Repealed effective January 1, 2002) Credit for research and development.

(a) General Credit. -- A taxpayer that claims for the taxable year a federal income tax credit under section 41 ~~41(a)~~ of the Code for increasing research activities is allowed a credit equal to five percent (5%) of the State's apportioned share of the taxpayer's expenditures for increasing research activities. The State's apportioned share of a taxpayer's expenditures for increasing research activities is the excess of the taxpayer's qualified research expenses for the taxable year over the base amount, as determined under section 41 of the Code, multiplied by a percentage equal to the ratio of the taxpayer's qualified research expenses in this State for the taxable year to the taxpayer's total qualified research expenses for the taxable year.

(b) Alternative Credit. -- A taxpayer that claims the alternative incremental credit under section 41(c)(4) of the Code for increasing research activities is allowed a credit equal to twenty-five percent (25%) of the State's apportioned share of the federal credit claimed. The State's apportioned share of the federal credit claimed is the amount of the alternative incremental credit the taxpayer claimed under section 41(c)(4) of the Code for the taxable year multiplied by a percentage equal to the ratio of the taxpayer's qualified research expenses in this State for the taxable year to the taxpayer's total qualified research expenses for the taxable year. For the purpose of this subsection, the amount of the alternative incremental credit claimed by a taxpayer is determined without regard to any reduction elected under section 280C(c) of the Code.

(c) Definitions. -- As used in this section, the terms 'qualified research expenses' and 'base amount' have the meaning provided in section 41 of the Code.

"§ 105-129.11. (Repealed effective January 1, 2002) Credit for worker training.

(a) Credit. -- A taxpayer that provides worker training for five or more of its eligible employees during the taxable year is allowed a credit equal to ~~fifty percent (50%) of its eligible expenditures for the wages paid to the eligible employees during the training. Wages paid to an employee performing his or her job while being trained are not eligible for the credit.~~ For positions located in an enterprise tier one area, the credit may not exceed one thousand dollars (\$1,000) per employee trained during the taxable year. For other positions, the credit may not exceed five hundred dollars (\$500.00) per employee trained during the taxable year. A position is located in an area if more than fifty percent (50%) of the employee's duties are performed in the area.

(b) Eligibility. -- ~~The eligibility of a taxpayer's expenditures and employees is determined as provided in G.S. 105-129.4. An employee is~~

eligible if the employee is in a full-time position not classified as exempt under the Fair Labor Standards Act, 29 U.S.C. § 213(a)(1) and meets one or more of the following conditions:

(1) The employee occupies a job for which the taxpayer is eligible to claim an installment of the credit for creating jobs.

(2) The employee is being trained to operate machinery and equipment for which the taxpayer is eligible to claim an installment of the credit for investing in machinery and equipment.

"§ 105-129.12. (Repealed effective January 1, 2002) Credit for investing in central administrative office property.

(a) Credit. -- If a taxpayer that has purchased or leased real property in this State begins to use the property as a central administrative office during the taxable year, the taxpayer is allowed a credit equal to seven percent (7%) of the eligible investment amount. The eligible investment amount is the lesser of (i) the cost of the property and (ii) the amount by which the cost of all of the property the taxpayer is using in this State as central administrative offices on the last day of the taxable year exceeds the cost of all of the property the taxpayer was using in this State as central administrative offices on the last day of the base year. The base year is that year, of the three immediately preceding taxable years, in which the taxpayer was using the most property in this State as central administrative offices. In the case of property that is leased, the cost of the property is not determined as provided in G.S. 105-129.2 but is considered to be the taxpayer's lease payments over a seven-year period, plus any expenditures made by the taxpayer to improve the property before it is used as the taxpayer's central administrative office if the expenditures are not reimbursed or credited by the lessor. The maximum credit allowed a taxpayer under this section for property used as a central administrative office is five hundred thousand dollars (\$500,000). The entire credit may not be taken for the taxable year in which the property is first used as a central administrative office but shall be taken in equal installments over the seven years following the taxable year in which the property is first used as a central administrative office. The basis in any real property for which a credit is allowed under this section shall be reduced by the amount of credit allowable.

(b) Mixed Use Property. -- If the taxpayer uses only part of the property as the taxpayer's central administrative office, the amount of the credit allowed under this section is reduced by multiplying it by a fraction the numerator of which is the square footage of the property used as the taxpayer's central administrative office and the denominator of which is the total square footage of the property.

(c) Expiration. -- If, in one of the seven years in which the installment of a credit accrues, the property with respect to which the credit was claimed is no longer used as a central administrative office, the credit expires and the taxpayer may not take any remaining installment of the credit. If, in one of the seven years in which the installment of a credit accrues, part of the property with respect to which the credit was claimed is no longer used as a central administrative office, the remaining installments of the credit shall be reduced by multiplying it by the fraction described in subsection (b) of this section. If, in one of the seven years in which the installment of a credit

accrues, the total number of employees the taxpayer employs at all of its central administrative offices in this State drops by 40 or more, the credit expires and the taxpayer may not take any remaining installment of the credit.

In each of these cases, the taxpayer may nonetheless take the portion of an installment that accrued in a previous year and was carried forward to the extent permitted under G.S. 105-129.5."

Section 2. G.S. 105-129.15(2) reads as rewritten:

"(2) Cost. -- ~~Determined~~ In the case of property owned by the taxpayer, cost is determined pursuant to regulations adopted under section 1012 of the Code, subject to the limitation on cost provided in section 179 of the Code. In the case of property the taxpayer leases from another, cost is value as determined pursuant to G.S. 105-130.4(j)(2)."

Section 3. G.S. 143B-437.04 reads as rewritten:

"§ 143B-437.04. ~~Economic Community development block grants.~~

(a) The Department of Commerce shall adopt guidelines for the awarding of Community Development Block Grants ~~for economic development that will ensure that no~~ to ensure that:

(1) No local match is required for grants awarded for projects located in enterprise tier one areas as defined in G.S. 105-129.3 and, to 105-129.3.

(2) To the extent practicable, that priority consideration for grants is given to projects located in enterprise tier one areas as defined in G.S. 105-129.3, 105-129.3 or in development zones that have met the conditions of subsection (b) of this section.

(b) In order to qualify for the benefits of this section, after an area is designated a development zone under G.S. 105-129.3A, the governing body of the city in which the zone is located must adopt a strategy to improve the zone and establish a development zone committee to oversee the strategy. The strategy and the committee must conform with requirements established by the Secretary of Commerce."

PART II. INFRASTRUCTURE FUNDS

Section 4. It is the intent of the General Assembly to appropriate funds from the General Fund to the Department of Commerce for the 1998-99 fiscal year to be allocated to the Utility Account of the Industrial Development Fund for use in accordance with G.S. 143B-437.01(b1).

Section 5. It is the intent of the General Assembly to appropriate funds from the General Fund to the Department of Commerce for the 1998-99 fiscal year to be allocated to the Industrial Development Fund for use in accordance with G.S. 143B-437.01(a).

Section 6. G.S. 143B-437.01 reads as rewritten:

"§ 143B-437.01. *Industrial Development Fund.*

(a) Creation and Purpose of Fund. -- There is created in the Department of Commerce the Industrial Development Fund to provide funds to assist the local government units of the most economically distressed counties in the State in creating jobs in certain industries. The Department of Commerce shall adopt rules providing for the administration of the program. Those

rules shall include the following provisions, which shall apply to each grant from the fund:

- (1) The funds shall be used for (i) installation of or purchases of equipment for ~~manufacturing or processing, eligible industries,~~ (ii) structural repairs, improvements, or renovations of existing buildings to be used for expansion of ~~manufacturing or processing, eligible industries,~~ or (iii) construction of or improvements to new or existing water, sewer, gas, or electrical utility distribution lines or equipment for existing or new or proposed industrial buildings to be used for ~~manufacturing or processing operations, eligible industries.~~ To be eligible for funding, the water, sewer, gas, or electrical utility lines or facilities shall be located on the site of the building or, if not located on the site, shall be directly related to the operation of the specific ~~manufacturing or processing~~ eligible industrial activity.
- (1a) The funds shall be used for projects located in economically distressed counties except that the Secretary of Commerce may use up to one hundred thousand dollars (\$100,000) to provide emergency economic development assistance in any county that is documented to be experiencing a major economic dislocation.
- (2) The funds shall be used by the city and county governments for projects that will directly result in the creation of new jobs. The funds shall be expended at a maximum rate of four thousand dollars (\$4,000) five thousand dollars (\$5,000) per new job created up to a maximum of four hundred thousand dollars (\$400,000) five hundred thousand dollars (\$500,000) per project.
- (3) There shall be no local match requirement if the project is located in an enterprise tier one area as defined in G.S. 105-129.3.
- (4) The Department may authorize a local government that receives funds under this section to use up to two percent (2%) of the funds, if necessary, to verify that the funds are used only in accordance with law and to otherwise administer the grant or loan.
- (a1) Definitions. -- The following definitions apply in this section:
 - (1) Air courier services. -- A person is engaged in the air courier services business if the person's primary business is furnishing air delivery of individually addressed letters and packages, except by the United States Postal Service.
 - (2) Central administrative office. -- Defined in the North American Industry Classification System adopted by the United States Office of Management and Budget.
 - (3) Data processing. -- Defined in the North American Industry Classification System adopted by the United States Office of Management and Budget.
 - (4) Economically distressed county. -- A county designated as an enterprise tier one, two, or three area pursuant to G.S. 105-129.3.

- (5) Eligible industry. -- A central administrative office or a person engaged in the business of air courier services, data processing, manufacturing, or warehousing and wholesale trade.
- (6) Reserved.
- (7) Major economic dislocation. -- The actual or imminent loss of 500 or more manufacturing jobs in the county or of a number of manufacturing jobs equal to at least ten percent (10%) of the existing manufacturing workforce in the county.
- (8) Manufacturing. -- Defined in the North American Industry Classification System adopted by the United States Office of Budget and Management.
- (9) Reserved.
- (10) Warehousing and wholesale trade. -- Defined in the North American Industry Classification System adopted by the United States Office of Management and Budget.
- (1) ~~Economically distressed county.~~ -- A county designated as an enterprise tier one, two, or three area pursuant to G.S. 105-129.3.
- (2) ~~Major economic dislocation.~~ -- The actual or imminent loss of 500 or more manufacturing jobs in the county or of a number of manufacturing jobs equal to at least ten percent (10%) of the existing manufacturing workforce in the county.
- (3) ~~Manufacturing and processing. Manufacturing.~~ -- Defined in the Standard Industrial Classification Manual issued by the United States Bureau of the Census.

(b) Repealed by Session Laws 1996, Second Extra Session, c. 13, s. 3.5.

(b1) Utility Account. -- There is created within the Industrial Development Fund a special account to be known as the Utility Account to provide funds to assist the local government units of enterprise tier one and tier two areas, as defined in G.S. 105-129.3, in creating jobs in manufacturing and processing, warehousing and distribution, and data processing, as defined in the Standard Industrial Classification Manual issued by the United States Bureau of the Census, eligible industries. The Department of Commerce shall adopt rules providing for the administration of the program. Except as otherwise provided in this subsection, those rules shall be consistent with the rules adopted with respect to the Industrial Development Fund. The rules shall provide that the funds in the Utility Account may be used only for construction of or improvements to new or existing water, sewer, gas, or electrical utility distribution lines or equipment for existing or new or proposed industrial buildings to be used for ~~industrial operations in manufacturing or processing, warehousing or distribution, or data processing.~~ eligible industrial operations. To be eligible for funding, the water, sewer, gas, or electrical utility lines or facilities shall be located on the site of the building or, if not located on the site, shall be directly related to the operation of the specific industrial activity. There shall be no maximum funding amount per new job to be created or per project.

(c) Reports. -- The Department of Commerce shall report annually to the General Assembly concerning the applications made to the fund and the

payments made from the fund and the impact of the payments on job creation in the State. The Department of Commerce shall also report quarterly to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division on the use of the moneys in the fund, including information regarding to whom payments were made, in what amounts, and for what purposes.

(c1) In addition to the reporting requirements of subsection ~~(b1)~~ (c) of this section, the Department of Commerce shall report annually to the General Assembly concerning the payments made from the Utility Account and the impact of the payments on job creation in the State. The Department of Commerce shall also report quarterly to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division on the use of the moneys in the Utility Account including information regarding to whom payments were made, in what amounts, and for what purposes.

(d) Repealed by Session Laws 1996. Second Extra Session. c. 13, s. 3.5."

PART III. AIR COURIER HUBS

Section 7. G.S. 105-164.3 is amended by adding two new subdivisions to read:

- "(6a) Interstate air courier. -- A person engaged in the air courier services business, as defined in G.S. 105-129.2, in interstate commerce.
- (6b) Hub. -- An interstate air courier's airport in this State that meets all of the following conditions:
 - a. The air courier has allocated to the airport under G.S. 105-388 more than sixty percent (60%) of its aircraft value apportioned to this State.
 - b. The air courier's primary function at the airport is to sort and distribute letters and packages received from multiple consolidation locations.
 - c. The air courier's primary function at the airport is not to consolidate letters and packages and deliver them to another airport for sorting and distribution."

Section 8. G.S. 105-164.4(a)(1d) is amended by adding a new subdivision to read:

- "k. Sales of the following items to an interstate air courier for use at its hub: materials handling equipment, racking systems, and related parts and accessories, for the storage or handling and movement of tangible personal property at an airport or in a warehouse or distribution facility."

Section 9. G.S. 105-164.13 is amended by adding a new subdivision to read:

- "(44) Sales of the following items to an interstate air courier for use at its hub: aircraft lubricants, aircraft repair parts, and aircraft accessories."

Section 10. G.S. 105-275 is amended by adding a new subdivision to read:

- "(24a) Aircraft that is owned or leased by an interstate air courier, is apportioned under G.S. 105-337 to the air courier's hub in

this State, and is used in the air courier's operations in this State. For the purpose of this subdivision, the terms 'interstate air courier' and 'hub' have the meanings provided in G.S. 105-164.3."

Section 11(a). The Piedmont Triad International Airport Authority may contract for design and construction of an air freight distribution facility on Airport property without being subject to the requirements of Article 8 of Chapter 143 of the General Statutes.

Section 11(b). The Piedmont Triad International Airport Authority may contract for supplies, materials, equipment, and contractual services of the Authority related to an air freight distribution facility on Airport property without being subject to the requirements of Article 3 of Chapter 143 of the General Statutes.

PART IV. RECYCLING INDUSTRY

Section 12. Chapter 105 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 3C.

"Tax Incentives for Recycling Facilities.

"§ 105-129.25. Definitions.

The following definitions apply in this Article:

- (1) Reserved.
- (2) Reserved.
- (3) Large recycling facility. -- A recycling facility that qualifies under G.S. 105-129.26(b).
- (4) Machinery and equipment. -- Engines, machinery, tools, and implements used or designed to be used in the business for which the credit is claimed. The term does not include real property as defined in G.S. 105-273 or rolling stock as defined in G.S. 105-333.
- (5) Major recycling facility. -- A recycling facility that qualifies under G.S. 105-129.26(a).
- (6) Owner. -- A person who owns or leases a recycling facility.
- (7) Post-consumer waste material. -- Any product that was generated by a business or consumer, has served its intended end use, and has been separated from the solid waste stream for the purpose of recycling. The term includes material acquired by a recycling facility either directly or indirectly, such as through a broker or an agent.
- (8) Purchase. -- Defined in section 179 of the Code.
- (9) Recycling facility. -- A manufacturing plant at least three-fourths of whose products are made of at least fifty percent (50%) post-consumer waste material measured by weight or volume. The term includes real and personal property located at or on land in the same county and reasonably near the plant site and used to perform business functions related to the plant or to transport materials and products to or from the plant. The term also includes utility infrastructure and transportation infrastructure to and from the plant.

"§ 105-129.26. Qualification; forfeiture.

(a) Major Recycling Facility. -- A recycling facility qualifies for the tax benefits provided in this Article and in Article 5 of this Chapter for major recycling facilities if it meets all of the following conditions:

- (1) The facility is located in an area that, at the time the owner began construction of the facility, was an enterprise tier one area pursuant to G.S. 105-129.3.
- (2) The Secretary of Commerce has certified that the owner will, by the end of the fourth year after the year the owner begins construction of the recycling facility, invest at least three hundred million dollars (\$300,000,000) in the facility and create at least 250 new, full-time jobs at the facility.
- (3) The jobs at the recycling facility meet the wage standard in effect pursuant to G.S. 105-129.4(b) as of the date the owner begins construction of the facility.

(b) Large Recycling Facility. -- A recycling facility qualifies for the tax credit provided in G.S. 105-129.27 for large recycling facilities if it meets all of the following conditions:

- (1) The facility is located in an area that, at the time the owner began construction of the facility, was an enterprise tier one area pursuant to G.S. 105-129.3.
- (2) The Secretary of Commerce has certified that the owner will, by the end of the second year after the year the owner begins construction of the recycling facility, invest at least one hundred fifty million dollars (\$150,000,000) in the facility and create at least 155 new, full-time jobs at the facility.
- (3) The jobs at the recycling facility meet the wage standard in effect pursuant to G.S. 105-129.4(b) as of the date the owner begins construction of the facility.

(c) Forfeiture. -- If the owner of a large or major recycling facility fails to make the required minimum investment or create the required number of new jobs within the period certified by the Secretary of Commerce under this section, the recycling facility no longer qualifies for the applicable recycling facility tax benefits provided in this Article and in Article 5 of this Chapter and forfeits all tax benefits previously received under those Articles. Forfeiture does not occur, however, if the failure was due to events beyond the owner's control. Upon forfeiture of tax benefits previously received, the owner is liable under Part 1 of Article 4 of this Chapter for a tax equal to the amount of all past taxes under Articles 3, 4, and 5 previously avoided as a result of the tax benefits received plus interest at the rate established in G.S. 105-241.1(i), computed from the date the taxes would have been due if the tax benefits had not been received. The tax and interest are due 30 days after the date of the forfeiture. An owner that fails to pay the tax and interest is subject to the penalties provided in G.S. 105-236.

(d) Substantiation. -- To claim a credit allowed by this Article, the owner must provide any information required by the Secretary of Revenue. Every owner claiming a credit under this Article shall maintain and make available for inspection by the Secretary of Revenue any records the Secretary considers necessary to determine and verify the amount of the credit to which the owner is entitled. The burden of proving eligibility for the credit

and the amount of the credit shall rest upon the owner, and no credit shall be allowed to an owner that fails to maintain adequate records or to make them available for inspection.

(e) Reports. -- The Department of Commerce shall report to the Fiscal Research Division of the General Assembly by May 1 of each year the following information for the 12-month period ending the preceding April 1:

- (1) The number and location of large and major recycling facilities qualified under this Article.
- (2) The number of new jobs created by each recycling facility.
- (3) The amount of investment in each recycling facility.
- (4) The amount of reinvestment credit refunded to each major recycling facility under G.S. 105-129.28.

"§ 105-129.27. Credit for investing in large or major recycling facility.

(a) Credit. -- An owner that purchases or leases machinery and equipment for a major recycling facility in this State during the taxable year is allowed a credit equal to fifty percent (50%) of the amount payable by the owner during the taxable year to purchase or lease the machinery and equipment. An owner that purchases or leases machinery and equipment for a large recycling facility in this State during the taxable year is allowed a credit equal to twenty percent (20%) of the amount payable by the owner during the taxable year to purchase or lease the machinery and equipment.

(b) Taxes Credited. -- The credit provided in this section is allowed against the franchise tax levied in Article 3 of this Chapter and the income tax levied in Part 1 of Article 4 of this Chapter. Any other nonrefundable credits allowed the owner are subtracted before the credit allowed by this section.

(c) Carryforwards. -- The credit provided in this section may not exceed the amount of tax against which it is claimed for the taxable year, reduced by the sum of all other credits allowed against that tax, except tax payments made by or on behalf of the owner. Any unused portion of the credit may be carried forward for the succeeding 25 years.

(d) Change in Ownership of Facility. -- The sale, merger, acquisition, or bankruptcy of a recycling facility, or any transaction by which the facility is reformulated as another business, does not create new eligibility in a succeeding owner with respect to a credit for which the predecessor was not eligible under this section. A successor business may, however, take any carried-over portion of a credit that its predecessor could have taken if it had a tax liability.

(e) Forfeiture. -- If any machinery or equipment for which a credit was allowed under this section is not placed in service within 30 months after the credit was allowed, the credit is forfeited. A taxpayer that forfeits a credit under this section is liable for all past taxes avoided as a result of the credit plus interest at the rate established under G.S. 105-241.1(i), computed from the date the taxes would have been due if the credit had not been allowed. The past taxes and interest are due 30 days after the date the credit is forfeited; a taxpayer that fails to pay the past taxes and interest by the due date is subject to the penalties provided in G.S. 105-236.

(f) No Double Credit. -- A recycling facility that is eligible for the credit allowed in this section is not allowed the credit for investing in machinery and equipment provided in G.S. 105-129.9.

"§ 105-129.28. Credit for reinvestment.

(a) Credit. -- A major recycling facility that is accessible by neither ocean barge nor ship and that transports materials to the facility or products away from the facility is allowed a credit against the tax imposed by Part 1 of Article 4 of this Chapter equal to its additional transportation and transloading expenses incurred with respect to the materials and products due to its inability to use ocean barges or ships. The additional expenses for which credit is allowed are expenses due to using river barges and expenses due to having to use another mode of transportation because the quantity that is transported by river barge is insufficient to meet the facility's needs. In order to claim the credit allowed by this section, the facility must provide the Secretary of Commerce audited documentation of the amount of its additional transportation and transloading expenses incurred during the taxable year.

(b) Cap. -- The credit allowed to a major recycling facility under this section for the taxable year may not exceed the applicable annual cap provided in the following table:

<u>Taxable Year</u>	<u>Cap</u>
1998	\$ 150,000
1999	\$ 640,000
2000	\$ 3,860,000
2001	\$ 8,050,000
2002	\$ 9,550,000
2003	\$10,100,000
2004-2007	\$10,400,000

(c) Reduction. -- For the first ten taxable years after the owner begins transporting materials and products to and from the major recycling facility, the credit allowed by this section must be reduced by the amount of credit allowed in previous years that was used for a purpose other than an allowable purpose under subsection (d) of this section, as certified by the Secretary of Commerce.

(d) Use of Credited Amount. -- For the first ten taxable years after the owner begins construction of the major recycling facility, the owner must use the amount of credit allowed under this section to pay for (i) investment in rail or roads associated with the facility, (ii) investment in water system infrastructure designed to reduce the expense of transporting materials and products to and from the recycling facility, and (iii) investment in land and infrastructure for other industrial sites located in the same county as the recycling facility. If the owner determines that there are no reasonable economic opportunities in a given year to use the total amount of credit for the expenditures described above, the owner may use the excess for investment at or in connection with the recycling facility above the initial required investment of three hundred million dollars (\$300,000,000):

Expenses incurred for the purposes allowed in this subsection during a taxable year in the ten-year period may be counted toward a credit allowed in a later taxable year in the ten-year period. If the owner is not able to use the full amount of the credit during a taxable year for any of the purposes

allowed by this subsection, the excess may be used for these purposes in subsequent taxable years.

The owner must provide the Secretary of Commerce with annual audited documentation demonstrating that the amount of credit received under this section during the previous twelve-month period has not been used for a purpose inconsistent with this subsection. If the Secretary of Commerce determines that the owner has used any of the credit for a purpose that is inconsistent with the requirements of this subsection, the Secretary of Commerce shall certify the amount so used to the Secretary of Revenue and the credit allowed the owner under this section for the following taxable year shall be reduced by that amount in accordance with subsection (c) of this section.

After the end of the ten-year period, the amount of any credit allowed under this section that has not yet been used may be used for investment at or in connection with the recycling facility above the initial required investment of three hundred million dollars (\$300,000,000).

(e) Credit Refundable. -- If the credit allowed by this section exceeds the amount of tax imposed by Part 1 of Article 4 of this Chapter for the taxable year reduced by the sum of all credits allowable, the Secretary shall refund the excess to the taxpayer. The refundable excess is governed by the provisions governing a refund of an overpayment by the taxpayer of the tax imposed in Part 1 of Article 4 of this Chapter. In computing the amount of tax against which multiple credits are allowed, nonrefundable credits are subtracted before refundable credits."

Section 13. G.S. 105-164.3 is amended by renumbering subdivision (8) as (7b) and adding a new subdivision to read:

"(8) Major recycling facility. -- Defined in G.S. 105-129.25."

Section 14. G.S. 105-164.4(a)(1d) is amended by adding a new subdivision to read:

"j. Sales to a major recycling facility of the following tangible personal property for use in connection with the facility: cranes, structural steel crane support systems, foundations related to the cranes and support systems, port and dock facilities, rail equipment, and material handling equipment."

Section 15. G.S. 105-164.13 is amended by adding two new subdivisions to read:

"(10a) Sales to a major recycling facility of (i) lubricants and other additives for motor vehicles or machinery and equipment used at the facility and (ii) materials, supplies, parts, and accessories, other than machinery and equipment, that are not capitalized by the taxpayer and are used or consumed in the manufacturing and material handling processes at the facility.

(10b) Sales to a major recycling facility of electricity used at the facility."

Section 16. G.S. 105-164.14 is amended by adding a new subsection to read:

"(g) Major Recycling Facilities. -- The owner of a major recycling facility is allowed an annual refund of sales and use taxes paid by it under this Article on building materials, building supplies, fixtures, and equipment

that become a part of the real property of the recycling facility. Liability incurred indirectly by the owner for sales and use taxes on these items is considered tax paid by the owner. A request for a refund must be in writing and must include any information and documentation required by the Secretary. A request for a refund is due within six months after the end of the major recycling facility's fiscal year. Refunds applied for after the due date are barred."

Section 17. G.S. 105-164.14(f) reads as rewritten:

"(f) Information to Counties. -- Upon written request of a county, the Secretary shall, within 30 days after the request, provide the designated county official a list of each claimant that has, within the past 12 months, received a refund under subsection ~~(b) or (c)~~ (b), (c), or (g) of this section of at least one thousand dollars (\$1,000) of tax paid to the county. The list shall include the name and address of each claimant and the amount of the refund it has received from that county. Upon written request of a county, a claimant that has received a refund under subsection ~~(b) or (c)~~ (b), (c), or (g) of this section shall provide the designated county official a copy of the request for the refund and any supporting documentation requested by the county to verify the request. For the purpose of this subsection, the designated county official is the chair of the board of county commissioners or a county official designated in a resolution adopted by the board. Information provided to a county under this subsection is not a public record and may not be disclosed except in accordance with G.S. 153A-148.1. If a claimant determines that a refund it has received under subsection ~~(b) or (c)~~ (b), (c), or (g) of this section is incorrect, it shall file an amended request for the refund."

Section 18. G.S. 105-275(8) is amended by adding a new sub-subdivision to read:

"d. Real or personal property that is used or, if under construction, is to be used by a major recycling facility as defined in G.S. 105-129.25 predominantly for recycling or resource recovering of or from solid waste, if the Department of Environment and Natural Resources furnishes a certificate to the tax supervisor of the county in which the property is situated stating the Department of Environment and Natural Resources has found that the described property has been or will be constructed or installed for use by a major recycling facility, complies or will comply with the rules of the Department of Environment and Natural Resources, and has, or will have as a purpose recycling or resource recovering of or from solid waste."

Section 19. G.S. 105-129.28, as enacted by Section 12 of this act, is repealed effective for taxable years beginning on or after January 1, 2008. This section does not affect the rights or liabilities of the State, a taxpayer, or another person arising under G.S. 105-129.28 before the effective date of its repeal; nor does it affect the right to any refund or credit of a tax that accrued under G.S. 105-129.28 before the effective date of its repeal.

The sole purpose of this ten-year sunset provision is to allow a determination to be made whether any major recycling facility continues to

experience additional transportation and transloading expenses due to its inability to use ocean barges or ships to transport materials and products to and from the facility. It is the expectation and intent that the General Assembly will postpone the sunset of G.S. 105-129.28 if it is determined that, based on audited documentation submitted by a major recycling facility and verified by the Secretary of Commerce, that any major recycling facility continues to experience these additional transportation and transloading expenses as of 2008.

PART V. EFFECTIVE DATES

Section 20. G.S. 105-129.6(a1), as enacted by Section 1 of this act, becomes effective January 1, 1999, and applies to applications filed on or after that date. The amendment to G.S. 105-129.9(c) made by Section 1 of this act is effective for taxable years beginning on or after January 1, 1998. Section 3 of this act becomes effective January 1, 1999. The remainder of Part I of this act is effective for taxable years beginning on or after January 1, 1999.

Section 21. Part II of this act becomes effective July 1, 1998.

Section 22. Section 10 of this act is effective for taxes imposed for taxable years beginning on or after July 1, 2001. Section 11 of this act becomes effective January 1, 1999, and expires January 1, 2004. The remainder of Part III of this act becomes effective January 1, 2001, and applies to sales made on or after that date.

Section 23. Section 12 of this act is effective for taxable years beginning on or after January 1, 1998. Sections 13 through 17 of this act become effective July 1, 1998, and apply to sales made on or after that date. Section 18 of this act is effective for taxes imposed for taxable years beginning on or after July 1, 1999. The remainder of Part IV of this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 23rd day of July, 1998.

Became law upon approval of the Governor at 2:50 p.m. on the 23rd day of July, 1998.

H.B. 1410

SESSION LAW 1998-56

AN ACT TO EXTEND THE MORATORIUM ON ISSUING SHELLFISH CULTIVATION LEASES IN CORE SOUND, AS RECOMMENDED BY THE JOINT LEGISLATIVE COMMISSION ON SEAFOOD AND AQUACULTURE.

The General Assembly of North Carolina enacts:

Section 1. Section 3 of Chapter 547 of the 1995 Session Laws, Regular Session 1996, as amended by subsection (b) of Section 1 of Chapter 633 of the 1995 Session Laws, Regular Session 1996; Section 27.33 of Chapter 18 of the 1996 Session Laws, Second Extra Session; Section 12 of S.L. 1997-256; Section 8 of S.L. 1997-347; Section 6.14 of S.L. 1997-400; and Section 15 of S.L. 1998-23, reads as rewritten:

"Sec. 3. Notwithstanding G.S. 113-202, a moratorium on new shellfish cultivation leases shall be imposed in the remaining area of Core Sound not

described in Section 1 of this act. During the moratorium, a comprehensive study of the shellfish lease program shall be conducted. The moratorium established under this section covers that part of Core Sound bounded by a line beginning at a point on Cedar Island at 35°00'39"N - 76°17'48"W, thence 109°(M) to a point in Core Sound 35°00'00"N - 76°12'42"W, thence 229°(M) to Marker No. 37 located 0.9 miles off Bells Point at 34°43'30"N - 76°29'00"W, thence 207°(M) to the Cape Lookout Lighthouse at 34°37'24"N - 76°31'30"W, thence 12°(M) to a point at Marshallberg at 34°43'07"N - 76°31'12"W, thence following the shoreline in a northerly direction to the point of beginning except that the highway bridges at Salters Creek, Thorofare Bay, and the Rumley Bay ditch shall be considered shoreline. The moratorium shall expire ~~when the Current Operations Appropriations and Capital Improvement Appropriations Act of 1998 becomes law, July 1, 1999.~~

Section 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 15th day of July, 1998.

Became law upon approval of the Governor at 10:45 a.m. on the 24th day of July, 1998.

H.B. 1334

SESSION LAW 1998-57

AN ACT TO INCREASE THE NUMBER OF CONTRACTORS ON THE BUILDING CODE COUNCIL AND TO REQUIRE COUNCIL TO CONSIDER THE IMPACT OF CODE CHANGES ON THE AFFORDABILITY OF RESIDENTIAL HOUSING.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143-136(a) reads as rewritten:

"(a) Creation: Membership; Terms. -- There is hereby created a Building Code Council, which shall be composed of 15 17 members appointed by the Governor, consisting of ~~one~~ two registered ~~architect~~, architects, one licensed general contractor, one ~~registered architect or~~ licensed general contractor specializing in residential design or construction, one licensed general contractor specializing in coastal residential construction, one registered engineer practicing structural engineering, one registered engineer practicing mechanical engineering, one registered engineer practicing electrical engineering, one licensed plumbing and heating contractor, one municipal or county building inspector, one licensed liquid petroleum gas dealer/contractor involved in the design of natural and liquid petroleum gas systems who has expertise and experience in natural and liquid petroleum gas piping, venting and appliances, a representative of the public who is not a member of the building construction industry, a licensed electrical contractor, a registered engineer on the engineering staff of a State agency charged with approval of plans of State-owned buildings, a municipal elected official or city manager, a county commissioner or county manager, and an active member of the North Carolina fire service with expertise in fire safety. In selecting the municipal and county members, preference should be given to members who qualify as

either a registered architect, registered engineer, or licensed general contractor. Of the members initially appointed by the Governor, three shall serve for terms of two years each, three shall serve for terms of four years each, and three shall serve for terms of six years each. Thereafter, all appointments shall be for terms of six years. The Governor may remove appointive members at any time. Neither the architect nor any of the above named engineers shall be engaged in the manufacture, promotion or sale of any building material, and any member who shall, during his term, cease to meet the qualifications for original appointment (through ceasing to be a practicing member of the profession indicated or otherwise) shall thereby forfeit his membership on the Council. In making new appointments or filling vacancies, the Governor shall ensure that minorities and women are represented on the Council.

The Governor may make appointments to fill the unexpired portions of any terms vacated by reason of death, resignation, or removal from office. In making such appointment, he shall preserve the composition of the Council required above."

Section 2. G.S. 143-138(a) reads as rewritten:

"(a) Preparation and Adoption. -- The Building Code Council is hereby empowered to prepare and adopt, in accordance with the provisions of this Article, a North Carolina State Building Code. Prior to the adoption of this Code, or any part thereof, the Council shall hold at least one public hearing. A notice of such public hearing shall be given once a week for two successive calendar weeks in a newspaper published in Raleigh, said notice to be published the first time not less than 15 days prior to the date fixed for said hearing. The Council may hold such other public hearings and give such other notice as it may deem necessary.

The Council shall request the Office of State Budget and Management to prepare a fiscal note for a proposed Code change that has a substantial economic impact, as defined in G.S. 150B-21.4(b1), G.S. 150B-21.4(b1), or that increases the cost of residential housing by eighty dollars (\$80.00) or more per housing unit. The Council shall not take final action on a proposed Code change that has a substantial economic impact or that increases the cost of residential housing by eighty dollars (\$80.00) or more per housing unit until at least 60 days after the fiscal note has been prepared. The change can become effective only in accordance with G.S. 143-138(d)."

Section 3. The Building Code Council shall reexamine the wind-load resistance requirements as they apply to residential dwellings. In its review of the wind-load resistance requirements, the Council shall consider site specific factors, the actual experience to date of the existing wind-load resistance requirements, and the impact of the proposed requirements on housing affordability.

Section 4. Sections 1 and 2 of this act become effective October 1, 1998. The remainder of this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 16th day of July, 1998.

Became law upon approval of the Governor at 10:50 a.m. on the 24th day of July, 1998.

H.B. 354

SESSION LAW 1998-58

AN ACT TO ELIMINATE THE REQUIREMENT OF CERTIFIED MAIL NOTICE IN BOND FORFEITURE CASES.

*The General Assembly of North Carolina enacts:***Section 1.** G.S. 15A-544(b) reads as rewritten:

"(b) If the principal does not comply with the conditions of the bail bond, the court having jurisdiction must enter an order declaring the bail to be forfeited. If forfeiture is ordered by the court, a copy of the order of forfeiture and notice that judgment will be entered upon the order after 60 days must be served on each obligor. Service is to be made by the clerk mailing by ~~certified mail, return receipt requested, first-class mail~~ a copy of the order of forfeiture and notice to each obligor at each obligor's address as noted on the bond and note on the original the date of mailing. Service is complete three days after the mailing."

Section 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 16th day of July, 1998.

Became law upon approval of the Governor at 10:55 a.m. on the 24th day of July, 1998.

S.B. 1129

SESSION LAW 1998-59

AN ACT TO AMEND THE STATUTES GOVERNING THE CONSEQUENCES FOR PRINCIPALS IN SCHOOLS IDENTIFIED AS LOW-PERFORMING UNDER THE ABC'S PLAN, AND TO REQUIRE LOCAL SCHOOL ADMINISTRATIVE UNITS TO DEVELOP PLANS TO ADDRESS THE NEEDS OF LOW-PERFORMING SCHOOLS.

*The General Assembly of North Carolina enacts:***Section 1.** G.S. 115C-105.37 reads as rewritten:

"§ 115C-105.37. *Identification of low-performing schools.*

(a) The State Board of Education shall design and implement a procedure to identify low-performing schools on an annual basis. Low-performing schools are those in which there is a failure to meet the minimum growth standards, as defined by the State Board, and a majority of students are performing below grade level.

(a1) By July 10 of each year, each local school administrative unit shall do a preliminary analysis of test results to determine which of its schools the State Board may identify as low-performing under this section. The superintendent then shall proceed under G.S. 115C-105.39. In addition, within 30 days of the initial identification of a school as low-performing by the local school administrative unit or the State Board, whichever occurs first, the superintendent shall submit to the local board a preliminary plan for addressing the needs of that school. Within 30 days of its receipt of this plan, the local board shall vote to approve, modify, or reject this plan. Before the board makes this vote, it shall make the plan available to the public, including the personnel assigned to that school and the parents and

guardians of the students who are assigned to the school, and shall allow for written comments. The board shall submit the plan to the State Board within five days of the board's vote. The State Board shall review the plan expeditiously and, if appropriate, may offer recommendations to modify the plan. The local board shall consider any recommendations made by the State Board.

(b) Each identified low-performing school that the State Board identifies as low-performing shall provide written notification to the parents of students attending that school. The written notification shall include a statement that the State Board of Education has found that the school has 'failed to meet the minimum growth standards, as defined by the State Board, and a majority of students in the school are performing below grade level.' This notification also shall include a description of the information about the plan developed under subsection (a1) of this section and a description of any additional steps the school is taking to improve student performance."

Section 2. G.S. 115C-105.39(a) reads as rewritten:

"(a) Upon the identification of a school as low-performing under this Part, the State Board shall proceed under G.S. 115C-325(q)(1) for the dismissal of the principal assigned to that school. Within 30 days of the initial identification of a school as low-performing, whether by the local school administrative unit under G.S. 115C-105.37(a1) or by the State Board under G.S. 115C-105.37(a), the superintendent shall take one of the following actions concerning the school's principal: (i) recommend to the local board that the principal be retained in the same position, (ii) recommend to the local board that the principal be retained in the same position and a plan of remediation should be developed, (iii) recommend to the local board that the principal be transferred, or (iv) proceed under G.S. 115C-325 to dismiss or demote the principal. The principal may be retained in the same position without a plan for remediation only if the principal was in that position for no more than two years before the school is identified as low-performing. The principal shall not be transferred to another principal position unless (i) it is in a school classification in which the principal previously demonstrated at least 2 years of success, (ii) there is a plan to evaluate and provide remediation to the principal for at least one year following the transfer to assure the principal does not impede student performance at the school to which the principal is being transferred; and (iii) the parents of the students at the school to which the principal is being transferred are notified. The principal shall not be transferred to another low-performing school in the local school administrative unit. If the superintendent intends to recommend demotion or dismissal, the superintendent shall notify the local board. Within 15 days of (i) receiving notification that the superintendent intends to proceed under G.S. 115C-325, or (ii) its decision concerning the superintendent's recommendation, but no later than September 30, the local board shall submit to the State Board a written notice of the action taken and the basis for that action. If the State Board does not assign an assistance team to that school or if the State Board assigns an assistance team to that school and the superintendent proceeds under G.S. 115C-325 to dismiss or demote the principal, then the State

Board shall take no further action. If the State Board assigns an assistance team to the school and the superintendent is not proceeding under G.S. 115C-325 to dismiss or demote the principal, then the State Board shall vote to accept, reject, or modify the local board's recommendations. The State Board shall notify the local board of its action within five days. If the State Board rejects or modifies the local board's recommendations and does not recommend dismissal of the principal, the State Board's notification shall include recommended action concerning the principal's assignment or terms of employment. Upon receipt of the State Board's notification, the local board shall implement the State Board's recommended action concerning the principal's assignment or terms of employment unless the local board asks the State Board to reconsider that recommendation. The State Board shall provide an opportunity for the local board to be heard before the State Board acts on the local board's request for a reconsideration. The State Board shall vote to affirm or modify its original recommended action and shall notify the local board of its action within five days. Upon receipt of the State Board's notification, the local board shall implement the State Board's final recommended action concerning the principal's assignment or terms of employment. If the State Board rejects or modifies the local board's action and recommends dismissal of the principal, the State Board shall proceed under G.S. 115C-325(q)(1)."

Section 3. G.S. 115C-325(q)(1) reads as rewritten:

~~"(1) Notwithstanding any other provision of this section or any other law, the State Board:~~

~~a. Shall suspend with pay a principal who has been assigned to a school for more than two years before the State Board identifies that school as low-performing and assigns an assistance team to that school under Article 8B of this Chapter; and~~

~~b. May suspend with pay a principal who has been assigned to a school for no more than two years before the State Board identifies that school as low-performing and assigns an assistance team to that school under Article 8B of this Chapter.~~

~~The panel shall order the dismissal of the principal, at which time the period of suspension with pay shall expire, unless the panel makes a public determination that the principal has established that the factors that led to the identification of the school as low-performing were not due to the inadequate performance of the principal.~~

Notwithstanding any other provision of this section or any other law, this subdivision governs the State Board's dismissal of principals assigned to low-performing schools to which the Board has assigned an assistance team:

a. The State Board through its designee may, at any time, recommend the dismissal of any principal who is assigned to a low-performing school to which an assistance team has been assigned. The State Board through its designee shall recommend the dismissal of any principal when the Board receives from the assistance team assigned to that principal's school two consecutive evaluations that include written

- findings and recommendations regarding the principal's inadequate performance.
- b. If the State Board through its designee recommends the dismissal of a principal under this subdivision, the principal shall be suspended with pay pending a hearing before a panel of three members of the State Board. The purpose of this hearing, which shall be held within 60 days after the principal is suspended, is to determine whether the principal shall be dismissed.
 - c. The panel shall order the dismissal of the principal if it determines from available information, including the findings of the assistance team, that the low performance of the school is due to the principal's inadequate performance.
 - d. The panel may order the dismissal of the principal if (i) it determines that the school has not made satisfactory improvement after the State Board assigned an assistance team to that school; and (ii) the assistance team makes the recommendation to dismiss the principal for one or more grounds established in G.S. 115C-325(e)(1) for dismissal or demotion of a career employee.
 - e. If the State Board or its designee recommends the dismissal of a principal before the assistance team assigned to the principal's school has evaluated that principal, the panel may order the dismissal of the principal if the panel determines from other available information that the low performance of the school is due to the principal's inadequate performance.
 - f. In all hearings under this subdivision, the burden of proof is on the principal to establish that the factors leading to the school's low performance were not due to the principal's inadequate performance. In all hearings under subdivision d. of this subdivision, the burden of proof is on the State Board to establish that the school failed to make satisfactory improvement after an assistance team was assigned to the school and to establish one or more of the grounds established for dismissal or demotion of a career employee under G.S. 115C-325(e)(1).
 - g. In all hearings under this subdivision, two consecutive evaluations that include written findings and recommendations regarding that person's inadequate performance from the assistance team are substantial evidence of the inadequate performance of the principal.
 - h. The State Board shall adopt procedures to ensure that due process rights are afforded to principals under this subsection-subdivision. Decisions of the panel may be appealed on the record to the State Board, with further right of judicial review under Chapter 150B of the General Statutes."

Section 4. This act is effective when it becomes law and applies to principals on or after that date.

In the General Assembly read three times and ratified this the 15th day of July, 1998.

Became law upon approval of the Governor at 10:57 a.m. on the 24th day of July, 1998.

S.B. 1397

SESSION LAW 1998-60

AN ACT TO AUTHORIZE THE COUNTY OF DURHAM TO ALLOW FEES FOR STORMWATER MAINTENANCE, REPAIR, AND IMPROVEMENTS ON PRIVATE PROPERTY TO BE PAID OVER TIME AND BECOME A LIEN ON REAL PROPERTY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 153A-277 reads as rewritten:

"§ 153A-277. Authority to fix and enforce rates.

(a) A county may establish and revise from time to time schedules of rents, rates, fees, charges, and penalties for the use of or the services furnished by a public enterprise. Schedules of rents, rates, fees, charges, and penalties may vary for the same class of service in different areas of the county and may vary according to classes of service, and different schedules may be adopted for services provided outside of the county. A county may include a fee relating to subsurface discharge wastewater management systems and services on the property tax bill for the real property where the system for which the fee is imposed is located.

(al) Before it establishes or revises a schedule of rates, fees, charges, or penalties for structural and natural stormwater and drainage systems under this section, the board of commissioners shall hold a public hearing on the matter. A notice of the hearing shall be given at least once in a newspaper having general circulation in the area, not less than seven days before the public hearing. The hearing may be held concurrently with the public hearing on the proposed budget ordinance.

The fees established under this subsection must be made applicable throughout the area of the county outside municipalities. Schedules of rates, fees, charges, and penalties for providing structural and natural stormwater and drainage system service may vary according to whether the property served is residential, commercial, or industrial property, the property's use, the size of the property, the area of impervious surfaces on the property, the quantity and quality of the runoff from the property, the characteristics of the watershed into which stormwater from the property drains, and other factors that affect the stormwater drainage system. Rates, fees, and charges imposed under this subsection may not exceed the county's cost of providing a stormwater and drainage system.

No stormwater utility fee may be levied under this subsection whenever two or more units of local government operate separate structural and natural stormwater and drainage system services in the same area within a county. However, two or more units of local government may allocate among themselves the functions, duties, powers, and responsibilities for jointly operating a single structural and natural stormwater and drainage system service in the same area within a county, provided that only one unit

may levy a fee for the service within the joint service area. For purposes of this subsection, a unit of local government shall include a regional authority providing structural and natural stormwater and drainage system services.

A county may by ordinance provide that funds collected from stormwater fees may be used to participate in the cost of repairs, improvements, and maintenance to the stormwater system on private property within the county. Upon written request by the property owner, a county may by ordinance allow the private share of the costs to be paid over a period of time fixed by the board of commissioners, not to exceed 10 years, with interest not to exceed nine percent (9%) per annum. The unpaid portion owed the county by the property owner shall become a lien on the real property and may be collected in accordance with the procedures provided in Article 26 of Chapter 105 of the General Statutes for collection of delinquent county real property taxes. Any such lien shall have the same priority as a lien for a special assessment as provided in G.S. 153A-200(c).

(b) A county may collect delinquent accounts by any remedy provided by law for collecting and enforcing private debts, and may specify by ordinance the order in which partial payments are to be applied among the various enterprise services covered by a bill for the services. A county may also discontinue service to a customer whose account remains delinquent for more than 10 days. If a delinquent customer is not the owner of the premises to which the services are delivered, the payment of the delinquent account may not be required before providing services at the request of a new and different tenant or occupant of the premises. If water or sewer services are discontinued for delinquency, it is unlawful for a person other than a duly authorized agent or employee of the county to reconnect the premises to the water or sewer system.

(c) Rents, rates, fees, charges, and penalties for enterprisory services are in no case a lien upon the property or premises served and, except as provided in subsection (d) of this section, are legal obligations of the person contracting for them, provided that no contract shall be necessary in the case of structural and natural stormwater and drainage systems.

(d) Rents, rates, fees, charges, and penalties for enterprisory services are legal obligations of the owner of the property or premises served when:

(1) The property or premises is leased or rented to more than one tenant and services rendered to more than one tenant are measured by the same meter; or

(2) Charges made for use of a sewerage system are billed separately from charges made for the use of a water distribution system."

Section 2. This act applies to Durham County only.

Section 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 27th day of July, 1998.

Became law on the date it was ratified.

H.B. 1277

SESSION LAW 1998-61

AN ACT TO ALLOW THE PUBLIC WORKS COMMISSION OF THE CITY OF FAYETTEVILLE TO PARTICIPATE IN THE LOCAL GOVERNMENTAL EMPLOYEES' RETIREMENT SYSTEM.

The General Assembly of North Carolina enacts:

Section 1. Notwithstanding any provisions of Article 3 of Chapter 128 of the General Statutes and of Section 6.20 of the Charter of the City of Fayetteville, as set forth in Section 1 of Chapter 557 of the 1979 Session Laws, the Public Works Commission of the City of Fayetteville, as described and continued by Section 6.1 of the Charter of the City of Fayetteville as set forth in Section 1 of Chapter 557 of the 1979 Session Laws, as amended by Section 2 of Chapter 756 of the 1981 Session Laws, shall be deemed to be an "employer" within the meaning of G.S. 128-21(11), and shall be eligible to participate in the North Carolina Local Governmental Employees' Retirement System.

Section 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 27th day of July, 1998.

Became law on the date it was ratified.

H.B. 1352

SESSION LAW 1998-62

AN ACT TO REPEAL THE INITIATIVE AND REFERENDUM AUTHORITY OF CABARRUS COUNTY AND THE CITY OF CONCORD.

The General Assembly of North Carolina enacts:

Section 1. Sections 3 and 4 of S.L. 1997-452 are repealed.

Section 2. This act is effective on and after March 1, 1998.

In the General Assembly read three times and ratified this the 27th day of July, 1998.

Became law on the date it was ratified.

H.B. 1525

SESSION LAW 1998-63

AN ACT TO REPEAL THE ACT ESTABLISHING A SUPPLEMENTARY PENSION FUND FOR FIREMEN IN THE CITY OF LAURINBURG.

The General Assembly of North Carolina enacts:

Section 1. Sections 1 through 7 of Chapter 1315 of the 1979 Session Laws are repealed.

Section 2. All funds held by the Trustees of the Laurinburg Firemen's Supplemental Retirement Fund are transferred to the Board of Trustees of the Local Firemen's Relief Fund of the City of Laurinburg to be held and administered as provided in Article 86 of Chapter 58 of the General Statutes.

Section 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 27th day of July, 1998.

Became law on the date it was ratified.

H.B. 1549

SESSION LAW 1998-64

AN ACT TO INCREASE THE FINE FOR DRIVING A VEHICLE ON
THE BEACH IN CURRITUCK COUNTY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 153A-139.1(a), as enacted by Chapter 875 of the 1985 Session Laws, reads as rewritten:

"§ 153A-139.1. *Regulation of motor vehicles at beaches.*

(a) A county may by ordinance regulate, restrict, and prohibit the use of dune or beach buggies, jeeps, motorcycles, cars, trucks, or any other form of power-driven vehicle specified by the governing body of the county on the foreshore, beach strand, and the barrier dune system. Violation of any ordinance adopted by the governing body pursuant to this section is a misdemeanor, punishable by a fine of not more than ~~fifty dollars (\$50.00)~~, five hundred dollars (\$500.00), or by imprisonment for not more than 30 days, or both in the discretion of the court."

Section 2. This act becomes effective December 1, 1998, and applies to offenses committed on or after that date.

In the General Assembly read three times and ratified this the 27th day of July, 1998.

Became law on the date it was ratified.

S.B. 1333

SESSION LAW 1998-65

AN ACT TO ADD CERTAIN DESCRIBED PROPERTY TO THE
CORPORATE LIMITS OF THE TOWN OF LANDIS.

The General Assembly of North Carolina enacts:

Section 1. The following described property is added to the corporate limits of the Town of Landis:

BEGINNING at a point in the western margin of Chapel Street, the southeastern corner of Roy Sadruddin (Deed Book 652, page 858, Rowan County Registry) and runs thence a line North 88 deg. 30 min. West 928.20 feet to a point in the eastern margin of the right-of-way of the Norfolk-Southern Railroad; thence with the eastern margin of said right-of-way and the western margin of Troy L. Day in a northerly direction 2600 feet to a point in the current Town Limits of the Town of Landis; thence a line with the Town Limits of the Town of Landis in a southeasterly direction 1180 feet to a point in the western margin of Chapel Street, Georgia Whitaker's eastern boundary; thence a line with the western margin of Chapel Street and the eastern margin of Georgia Whitaker and Troy Day in a southerly direction 840 feet to a point, the northeastern corner of James Earl McGee; thence a line with the western margin of Chapel Street and the eastern margin of McGee, Janice Evans and others, Troy Day, David

Simpson, Brenda Baxter, Keith Williams, Johnsie Baxter and Roy Sadruddin 1020 feet to a point, Roy Sadruddin's southeastern corner, the point of BEGINNING.

Section 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 28th day of July, 1998.

Became law on the date it was ratified.

S.B. 1203

SESSION LAW 1998-66

AN ACT TO ALLOW THE CITY OF CHARLOTTE TO CONTINUE TO LEVY STORMWATER FEES IF REVENUE BONDS HAVE BEEN ISSUED AND ARE OUTSTANDING.

The General Assembly of North Carolina enacts:

Section 1. G.S. 160A-314 reads as rewritten:

"§ 160A-314. *Authority to fix and enforce rates.*

(a) A city may establish and revise from time to time schedules of rents, rates, fees, charges, and penalties for the use of or the services furnished by any public enterprise. Schedules of rents, rates, fees, charges, and penalties may vary according to classes of service, and different schedules may be adopted for services provided outside the corporate limits of the city.

(a1) Before it establishes or revises a schedule of rates, fees, charges, or penalties for structural and natural stormwater and drainage systems under this section, the city council shall hold a public hearing on the matter. A notice of the hearing shall be given at least once in a newspaper having general circulation in the area, not less than seven days before the public hearing. The hearing may be held concurrently with the public hearing on the proposed budget ordinance.

The fees established under this subsection must be made applicable throughout the area of the city. Schedules of rates, fees, charges, and penalties for providing structural and natural stormwater and drainage system service may vary according to whether the property served is residential, commercial, or industrial property, the property's use, the size of the property, the area of impervious surfaces on the property, the quantity and quality of the runoff from the property, the characteristics of the watershed into which stormwater from the property drains, and other factors that affect the stormwater drainage system. Rates, fees, and charges imposed under this subsection may not exceed the city's cost of providing a stormwater and drainage system.

No stormwater utility fee may be levied under this subsection whenever two or more units of local government operate separate structural and natural stormwater and drainage system services in the same area within a ~~county~~ county, except that a unit of local government that has issued revenue bonds, including revenue bonds issued to refund prior revenue bonds, for which stormwater utility fees have been pledged under Article 5 of Chapter 159 of the General Statutes may continue to levy a stormwater utility fee under this subsection for the sole purpose of (i) paying principal, interest, or redemption premiums in accordance with the terms of the

revenue bonds, (ii) funding any reserve requirements or similar obligations imposed by any documents, instruments, or agreements pursuant to which the revenue bonds are authorized or issued or securing the same or any related credit facility, liquidity facility, derivative agreement, or any other similar agreement, and (iii) paying any related cost, fees, and expenses until the revenue bonds have been retired. However, two or more units of local government may allocate among themselves the functions, duties, powers, and responsibilities for jointly operating a single structural and natural stormwater and drainage system service in the same area within a county, provided that only one unit may levy a fee for the service within the joint service area. For purposes of this subsection, a unit of local government shall include a regional authority providing structural and natural stormwater and drainage system services.

(a2) A fee for the use of a disposal facility provided by the city may vary based on the amount, characteristics, and form of recyclable materials present in solid waste brought to the facility for disposal. This section does not prohibit a city from providing aid to low-income persons to pay all or part of the cost of solid waste management services for those persons.

(b) A city shall have power to collect delinquent accounts by any remedy provided by law for collecting and enforcing private debts, and may specify by ordinance the order in which partial payments are to be applied among the various enterprise services covered by a bill for the services. A city may also discontinue service to any customer whose account remains delinquent for more than 10 days. When service is discontinued for delinquency, it shall be unlawful for any person other than a duly authorized agent or employee of the city to do any act that results in a resumption of services. If a delinquent customer is not the owner of the premises to which the services are delivered, the payment of the delinquent account may not be required before providing services at the request of a new and different tenant or occupant of the premises, but this restriction shall not apply when the premises are occupied by two or more tenants whose services are measured by the same meter.

(c) Except as provided in subsection (d) and G.S. 160A-314.1, rents, rates, fees, charges, and penalties for enterprisory services shall be legal obligations of the person contracting for them, and shall in no case be a lien upon the property or premises served, provided that no contract shall be necessary in the case of structural and natural stormwater and drainage systems.

(d) Rents, rates, fees, charges, and penalties for enterprisory services shall be legal obligations of the owner of the premises served when:

- (1) The property or premises is leased or rented to more than one tenant and services rendered to more than one tenant are measured by the same meter.
- (2) Charges made for use of a sewage system are billed separately from charges made for the use of a water distribution system.

(e) Nothing in this section shall repeal any portion of any city charter inconsistent herewith."

Section 2. This act applies to the City of Charlotte only.

Section 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 29th day of July, 1998.

Became law on the date it was ratified.

S.B. 186

SESSION LAW 1998-67

AN ACT TO PROVIDE THAT THE GOVERNING BODY OF A TAXING UNIT MAY DELAY THE ACCRUAL OF INTEREST ON CERTAIN UNPAID PROPERTY TAXES.

The General Assembly of North Carolina enacts:

Section 1. A taxing unit's governing body may by resolution provide that, notwithstanding the provisions of G.S. 105-360 regarding the accrual of interest and G.S. 105-380 and G.S. 105-381 regarding the release, refund, or compromise of taxes, interest shall not accrue on unpaid taxes for fiscal year 1997-98 unless the taxes remain unpaid after June 6, 1998. Interest accruing on taxes that remain unpaid after June 6, 1998, shall be computed according to the schedule stated in G.S. 105-360 in the same manner as though the taxes were unpaid as of January 6, 1998. A resolution adopted pursuant to this act may apply only to fiscal year 1997-98 taxes, receipts of which were not delivered to the tax collector before October 3, 1997.

Section 2. A resolution adopted by a taxing unit's governing body pursuant to this act relieves the tax collector of that taxing unit of any obligation to collect interest on taxes to which the resolution applies that are paid on or before June 6, 1998. After adoption of the resolution, the governing body of the taxing unit or its delegate shall refund any interest subject to Section 1 of this act that was paid by a taxpayer for the period between January 6, 1998, and June 6, 1998.

Section 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 20th day of July, 1998.

Became law upon approval of the Governor at 8:30 a.m. on the 30th day of July, 1998.

H.B. 1368

SESSION LAW 1998-68

AN ACT TO PROVIDE COMMUNITY COLLEGES WITH ADDITIONAL PURCHASING FLEXIBILITY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 115D-58.5(b) reads as rewritten:

"(b) Each institution shall be governed in its purchasing of all supplies, equipment, and materials by contracts made by or with the approval of the Purchase and Contract Division of the Department of ~~Administration~~. Administration except as provided in G.S. 115D-58.14. No contract shall be made by any board of trustees for purchases unless provision has been made in the budget of the institution to provide payment thereof. In order to protect the State purchase contracts, it is the duty of the board of trustees

and administrative officers of each institution to pay for such purchases promptly in accordance with the contract of purchase. Equipment shall be titled to the State Board of Community Colleges if derived from State or federal funds."

Section 2. Article 4A of Chapter 115D is amended by adding a new section to read:

"§ 115D-58.14. Purchasing flexibility.

(a) Community colleges and the Center for Applied Textile Technology may purchase the same supplies, equipment, and materials from noncertified sources as are available under State term contracts, subject to the following conditions:

(1) The purchase price, including the cost of delivery, is less than the cost under the State term contract; and

(2) The cost of the purchase shall not exceed the bid value benchmark established under G.S. 143-53.1.

(b) The State Board of Community Colleges and the Department of Administration shall adopt policies and procedures for monitoring the implementation of this section."

Section 3. This act is effective when it becomes law and applies to purchases made on or after that date.

In the General Assembly read three times and ratified this the 20th day of July, 1998.

Became law upon approval of the Governor at 8:31 a.m. on the 30th day of July, 1998.

S.B. 1229

SESSION LAW 1998-69

AN ACT TO ABOLISH TAX WAIVERS FOR THE TRANSFER OR DELIVERANCE OF A DECEDENT'S PROPERTY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-2.1 reads as rewritten:

"§ 105-2.1. Internal Revenue Code definition- Definitions.

As used in this Article, the term "Code" has the same meaning as in G.S. 105-228.90. The following definitions apply in this Article:

(1) Code. -- Defined in G.S. 105-228.90.

(2) Collector. -- Defined in G.S. 28A-1-1.

(3) Personal representative. -- Defined in G.S. 28A-1-1."

Section 2. G.S. 105-11 is repealed.

Section 3. G.S. 105-11.1 is repealed.

Section 4. G.S. 105-12 is repealed.

Section 5. Article 1 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"§ 105-13.1. Notices to Secretary of certain payments.

(a) Life Insurance Policy. -- When a company pays the proceeds of a life insurance policy as a result of the death of an individual who owned the policy and was the named insured under the policy, the company must notify the Secretary of the payment on a form approved by the Secretary unless one of the following applies:

- (1) The payment is to the surviving spouse.
- (2) The payment is to a Class A beneficiary, as described in G.S. 105-4(a), and the proceeds of the policy do not exceed one hundred thousand dollars (\$100,000).

(b) Annuity and IRA. -- When a company pays the initial payment of an annuity or the initial distribution of an IRA as a result of the death of the annuitant or owner of the IRA, the company must notify the Secretary of the payment or distribution on a form approved by the Secretary unless one of the following applies:

- (1) The payment or distribution is to the surviving spouse.
- (2) The payment or distribution is to a Class A beneficiary, as described in G.S. 105-4(a), and the total amount to be paid under the annuity or distributed under the IRA does not exceed one hundred thousand dollars (\$100,000)."

Section 6. G.S. 105-20 reads as rewritten:

"§ 105-20. ~~Legacy charged upon real estate, heir or devisee to deduct and pay tax; limitation; Inheritance or Estate Tax Waiver. Taxes are a lien on real property in an estate.~~

Whenever such legacy shall be charged upon or payable out of real estate, the heir or devisee of such real estate, before paying the same to such legatee, shall deduct the tax therefrom at the rates aforesaid, and pay the amount so deducted to the executor or administrator or the Secretary of Revenue, and the same shall remain a charge upon such real estate until paid, and in default thereof the same shall be enforced by the decrees of the court in the same manner as the payment of such legacy may be enforced: Provided, that all taxes imposed by this Article shall be a lien upon the real and personal property of the estate on which the tax is imposed or upon the proceeds arising from the sale of such property from the time said tax is due and payable, and shall continue a lien until said tax is paid and receipted for by the proper officer of the State: Provided further, that no lien for inheritance or estate taxes shall attach or affect the land after 10 years from the date of death of the decedent: Provided further, that no taxes imposed by this Article shall be a lien upon real property that is released by an Inheritance or Estate Tax Waiver issued by the Secretary of Revenue. An Inheritance or Estate Tax Waiver issued by the Secretary of Revenue and bearing the signature or official facsimile signature of the Secretary of Revenue covering real property may be registered in the office of the Register of Deeds of the county or counties where the real estate described in the waiver is located. No formalities as to acknowledgement, probate, or approval by any officer shall be required as a condition to such registration. An Inheritance or Estate Tax Waiver so registered shall be conclusive evidence that the real property described in such waiver is not subject to the lien of any taxes imposed by this Article.

The taxes imposed by this Article on the transfer of real or personal property are a lien on the real property in an estate and on the proceeds arising from the sale of real property. The lien is created at the date of death of the decedent and continues until the tax is paid, 10 years have elapsed since the date of the decedent's death, or the lien is released. A lien is released when the Secretary issues a tax waiver for the lien, the Secretary

issues an inheritance tax certificate, or the personal representative files a tax certification with the clerk of superior court. A tax waiver may be filed in the office of the register of deeds of each county where the property is located. No formalities as to acknowledgment, probate, or approval by any officer are required as a condition to filing. The filing of a tax waiver is conclusive evidence that the real property described in the waiver is not subject to a lien for taxes imposed by this Article."

Section 7. G.S. 105-24 reads as rewritten:

"§ 105-24. Tax waiver required for transfer of decedents' property in some cases; inventory of lock boxes; withdrawal of bank deposits, etc., payable to either husband or wife or survivor. Inventory of safe-deposit boxes.

(a) No safe deposit company, trust company, corporation, bank, or other institution, person or persons having in possession or control or custody, in whole or in part, securities, deposits, assets, or property belonging to or standing in the name of a decedent, or belonging to or standing in the joint names of decedent and one or more persons, shall deliver or transfer the same to any person whatsoever, whether in a representative capacity or not, or to the survivor or to the survivors when held in the joint names of a decedent and one or more persons, without retaining a sufficient portion or amount thereof to pay taxes or interest assessed under this Article on property transferred by the decedent; but the Secretary of Revenue may consent in writing to such delivery or transfer, and such consent shall relieve said safe deposit company, trust company, corporation, bank or other institution, person or persons from the obligation herein imposed. Securities whose declaration date is after the decedent's death, or interest that accrues after the decedent's death on money on deposit at a bank, savings and loan association, credit union, or other corporation, however, may be transferred or delivered without retaining a portion of the property for the payment of taxes or interest and without obtaining the written consent of the Secretary to the delivery or transfer. Provided: The clerk of superior court of the resident county of a decedent may authorize in writing one or more banks, safe deposit companies, trust companies or any other institutions to transfer to the properly qualified representative of the estate any funds on deposit in the name of the decedent or the decedent and one or more persons when the aggregate amount of all such deposits in all such institutions is two thousand dollars (\$2,000) or less, and when such deposit or deposits compose the total cash assets of the estate. Such authorization shall have the same force and effect as when issued in writing by the Secretary of Revenue.

(b) Except as provided in subsection (c) of this section, every safe deposit company, trust company, corporation, bank or other institution, person, or persons engaged in the business of renting ~~lock~~ safe-deposit boxes for the safekeeping of valuable papers and personal effects, or having in their possession or supervision in such ~~lock~~ safe-deposit boxes such valuable papers or personal effects shall, upon the death of any person using or having access to such ~~lock~~ safe-deposit box, as a condition precedent to the opening of such ~~lock~~ safe-deposit box by the ~~executor, administrator,~~ personal representative ~~lessee~~ representative, collector, lessee, or cotenant of such deceased person, require the presence of the clerk of the superior court of the county in which such ~~lock~~ the box is located. It shall be the

duty of the clerk of the superior court, or his representative, in the presence of ~~an officer or a~~ representative of the safe deposit company, trust company, corporation, bank, or other institution, person or persons, to make an inventory of the contents of ~~such lock the~~ box and to furnish a copy of such inventory ~~to the Secretary of Revenue,~~ to the ~~executor, administrator,~~ personal representative, collector, lessee, or cotenant of the decedent, and a copy to the safe deposit company, trust company, corporation, bank, or other institution, person, or persons having possession of ~~such lock the safe-deposit~~ box; provided, that for ~~lock~~ boxes to which decedent merely had access the inventory shall include only assets in which the decedent has or had an interest. ~~Immediately after~~ After the clerk of superior court has made an inventory of the contents of the ~~lock~~ safe-deposit box, the safe deposit company, trust company, corporation, bank or other institution, or person shall, upon request, release to the ~~lessee~~ personal representative, collector, lessee, or cotenant of the ~~lock~~ box ~~any life insurance policy stored in the lock box for delivery to the beneficiary named in the policy. No other contents of the lock box may be released except~~ Notwithstanding any of the provisions of this section any life insurance company may pay the proceeds of any policy upon the life of a decedent to the person entitled thereto as soon as it shall have mailed to the Secretary of Revenue a notice, in such form as the Secretary of Revenue may prescribe, setting forth the fact of such payment; but if such notice be not mailed, all of the provisions of this section shall apply, the contents of the box.

(c) Notwithstanding the provisions of subsection (b) of this section, if the ~~properly qualified personal representative of an estate~~ personal representative, collector, lessee, or cotenant believes upon reliable information that a ~~lock safe-deposit~~ box to which the decedent had access is empty, ~~the personal representative that person~~ may so certify to the clerk of superior court of the county in which the ~~lock~~ box is located. Upon receipt of this certificate, the clerk may authorize in writing the ~~personal representative or the personal representative's named agent~~ representative, collector, lessee, or cotenant to open the ~~lock~~ box outside of the clerk's presence. The ~~personal representative or the personal representative's agent~~ authorized person shall open the ~~lock~~ box in the presence of ~~an officer or a~~ representative of the institution having control or custody of the ~~lock~~ box, and the ~~personal representative or the personal representative's agent~~ shall certify to the clerk whether the ~~lock~~ box is or is not empty. The certificate shall include the name of the ~~officer or~~ representative of the institution who was present at the time the ~~lock~~ box was opened and shall be signed by the ~~officer or~~ representative to indicate that ~~he or she~~ the representative was present. ~~If the lock box is empty, no tax waiver will be required from, and no notice given to, the Secretary of Revenue. If the lock safe-deposit box is not empty, the officer or representative of the institution shall close the lock box at once and the lock box may be reopened only in accordance with subsection (b) of this section.~~

(d) ~~Notwithstanding any of the provisions of this section, in any case where a bank deposit has been heretofore made or is hereafter made, or where savings and loan stock has heretofore been issued or is hereafter issued, in the names of two or more persons and payable to either or the~~

~~survivor or survivors of them, such bank or savings and loan association may, upon the death of either of such persons, allow the person or persons entitled thereto to withdraw as much as fifty percent (50%) of such deposit or stock, and the balance thereof shall be retained by the bank or savings and loan association to cover any taxes that may thereafter be assessed under this Article. When it is ascertained that there is no liability of such deposit or stock for taxes under this Article, the Secretary of Revenue shall furnish the bank or savings and loan association his written consent for the payment of the retained percentage to the person or persons entitled thereto by law; and the Secretary of Revenue may furnish such written consent to the bank or savings and loan association upon the qualification of a personal representative of the deceased. If the person entitled to funds in an account is the surviving spouse and the account is a joint account of the surviving spouse and the decedent with right of survivorship, no tax waiver is required from the Secretary of Revenue to release the funds in the account.~~

(e) Failure to comply with the provisions of this section shall render such safe deposit company, trust company, corporation, bank or other institution, person or persons liable for the amount of the taxes and interest due under this Article on property transferred by the decedent. In any action brought under this provision it shall be a sufficient defense that the delivery or transfer of securities, deposits, assets, or property was made in good faith without knowledge of the death of the decedent and without knowledge of circumstances sufficient to place the defendant on inquiry."

Section 8. G.S. 105-30 is repealed.

Section 9. G.S. 105-31 reads as rewritten:

"§ 105-31. ~~Additional remedies for enforcement of tax.~~ Action to collect tax due.

~~In addition to all other remedies which may now exist under the law, or may hereafter be established, for the collection of the taxes imposed by the preceding sections of this Article, the tax so imposed shall be a lien upon all of the property and upon all of the estate, with respect to which the taxes are levied, as well as collectible out of any other property, resort to which may be had for their payment; and the said taxes shall constitute a debt, which may be recovered in an action brought by the Secretary of Revenue in any court of competent jurisdiction in this State, and/or in any court having jurisdiction of actions of debt in any state of the United States, and/or in any court of the United States against an administrator, executor, trustee, or personal representative, and/or any person, corporation, or concern having in hand any property, funds, or assets of any nature, with respect to which such tax has been imposed. No title or interest to such estate, funds, assets, or property shall pass, and no disposition thereof shall be made by any person claiming an interest therein until said taxes have been fully paid or until the Secretary of Revenue has released such property by the issuance of an Inheritance or Estate Tax Waiver. Taxes payable under this Article are a debt that may be recovered in an action brought by the Secretary against the personal representative or against any other person having in hand any property with respect to which the taxes have been imposed."~~

Section 10. G.S. 25-4-405(c) reads as rewritten:

"(c) A transaction, although subject to this Article, is also subject to G.S. ~~105-24~~, 41-2.1, 53-146.1, 54-109.58, and 54B-129, and in case of conflict between the provisions of this section and either of those sections, the provisions of those sections control."

Section 11. G.S. 41-2.1(f) reads as rewritten:

"(f) ~~Nothing herein contained shall be construed to~~ This section does not repeal or modify any of the provisions of G.S. ~~105-24 relating to the administration of the inheritance laws or any other~~ provisions of the law relating to inheritance taxes."

Section 12. G.S. 41-2.2(d) reads as rewritten:

"(d) ~~Nothing herein contained shall be construed to~~ This section does not repeal or modify any of the provisions of G.S. ~~105-2, 105-11, and 105-24, relating to the administration of the inheritance tax laws, or any other~~ provisions of the law relating to inheritance taxes."

Section 13. G.S. 53-146.1(b) reads as rewritten:

"(b) ~~Nothing herein contained shall be construed to~~ This section does not repeal or modify any of the provisions of G.S. ~~105-24, relating to the administration of the estate tax laws of this State, or provisions of laws relating to estate taxes; the provisions herein shall regulate, govern and protect taxes.~~ This section regulates and protects the bank in its relationship with such joint owners of deposit accounts as herein provided. accounts."

Section 14. G.S. 53-146.2(d) reads as rewritten:

"(d) ~~Nothing herein contained shall be construed to~~ This section does not repeal or modify any of the provisions of G.S. ~~105-24, relating to the administration of the estate tax laws of this State, or provisions of laws relating to estate taxes.~~"

Section 15. G.S. 54-109.58(b) reads as rewritten:

"(b) ~~Nothing herein contained shall be construed to~~ This section does not repeal or modify any of the provisions of G.S. ~~105-24, relating to the administration of the estate tax laws of this State, or provisions of laws relating to estate taxes; the provisions herein shall regulate, govern and protect taxes.~~ This section regulates and protects the credit union in its relationship with such joint owners of ~~accounts as herein provided.~~ accounts."

Section 16. G.S. 54B-129(b) reads as rewritten:

"(b) ~~Nothing herein contained shall be construed to~~ This section does not repeal or modify any of the provisions of G.S. ~~105-24, relating to the administration of the estate tax laws of this State, or provisions of law relating to estate taxes; the provisions herein shall regulate, govern and protect taxes.~~ This section regulates and protects the association in its relationships with such joint owners of deposit accounts as herein provided. accounts."

Section 17. G.S. 54B-130(d) reads as rewritten:

"(d) ~~Nothing herein contained shall be construed to~~ This section does not repeal or modify any of the provisions of G.S. ~~105-24, relating to the administration of the estate tax laws of this State, or provisions of laws relating to estate taxes.~~"

Section 18. G.S. 54C-165(b) reads as rewritten:

~~"(b) Nothing in this section is construed to~~ This section does not repeal or modify any provision of G.S. 105-24 relating to the administration of the estate tax laws of this State or any other law relating to estate taxes. This section ~~shall regulate, govern, and protect~~ regulates and protects the savings bank in its relationships with the joint owners of deposit accounts."

Section 19. G.S. 54C-166(d) reads as rewritten:

~~"(d) Nothing in this section is construed to~~ This section does not repeal or modify any provision of G.S. 105-24 relating to the administration of estate tax laws of this State or any other law relating to estate taxes."

Section 20. This act becomes effective August 1, 1998, and applies to estates of decedents who die on or after that date.

In the General Assembly read three times and ratified this the 22nd day of July, 1998.

Became law upon approval of the Governor at 8:34 a.m. on the 30th day of July, 1998.

S.B. 1289

SESSION LAW 1998-70

AN ACT TO CLARIFY THE AUTHORITY OF REGIONAL TRANSIT AUTHORITIES TO USE INSTALLMENT PURCHASE FINANCING.

The General Assembly of North Carolina enacts:

Section 1. G.S. 160A-20(h) is amended by adding a new subdivision to read:

"(11) A regional public transportation authority or a regional transportation authority created pursuant to Article 26 or Article 27 of this Chapter."

Section 2. G.S. 160A-610 is amended by adding a new subdivision to read:

"(9a) To purchase or finance real or personal property in the manner provided for cities and counties under G.S. 160A-20;"

Section 3. G.S. 160A-639 is amended by adding a new subdivision to read:

"(9a) To purchase or finance real or personal property in the manner provided for cities and counties under G.S. 160A-20;"

Section 4. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 29th day of July, 1998.

Became law upon approval of the Governor at 9:40 p.m. on the 30th day of July, 1998.

H.B. 1522

SESSION LAW 1998-71

AN ACT TO ALLOW MEMBERS OF THE LOCAL GOVERNMENTAL EMPLOYEES' RETIREMENT SYSTEM TO PURCHASE SERVICE RENDERED AS A PART-TIME TEACHER OR STATE EMPLOYEE AND TO ALLOW MEMBERS OF THE TEACHERS' AND STATE EMPLOYEES' RETIREMENT SYSTEM TO PURCHASE SERVICE RENDERED AS A LOCAL GOVERNMENTAL EMPLOYEE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 128-26(p)(1) reads as rewritten:

- "(1) Notwithstanding any other provision of this Chapter, upon completion of five years of membership service, any member may purchase service previously rendered as a part-time employee of a participating employer as defined in ~~G.S. 128-21(11)~~, G.S. 128-21(11) or G.S. 135-1(11), except for temporary or part-time service rendered while a full-time student in pursuit of a degree or diploma in a degree-granting program. Payment shall be made in a single lump sum in an amount equal to the full actuarial cost of providing credit for the service, together with interest and an administrative fee, as determined by the Board of Trustees on the advice of the Retirement System's actuary. Notwithstanding the provisions of G.S. 128-26(b), the Board of Trustees shall fix and determine by appropriate rules and regulations how much service in any year, as based on compensation, is equivalent to one year of service in proportion to "earnable compensation", but in no case shall more than one year of service be creditable for all service in one year. Notwithstanding the foregoing provisions of this subdivision that provide for the purchase of service credits, the terms "full cost", "full liability", and "full actuarial cost" include assumed annual post-retirement allowance increases, as determined by the Board of Trustees, from the earliest age at which a member could retire on an unreduced service allowance."

Section 2. G.S. 128-26(r) reads as rewritten:

- "(r) Credit at Full Cost for Temporary ~~Local~~ Government Employment.
 -- Notwithstanding any other provisions of this Chapter, any member may purchase creditable service for ~~local~~ government employment when classified as a temporary employee subject to the conditions that:
- (1) The member was employed by an employer as defined in ~~G.S. 128-21(11)~~; G.S. 128-21(11) or G.S. 135-1(11);
 - (2) The member's temporary employment met all other requirements of ~~G.S. 128-21(10)~~; G.S. 128-21(10), or G.S. 135-1(10) or (25);
 - (3) The member has completed five years or more of membership service;
 - (4) The member acquires from the employer such certifications of temporary employment as are required by the Board of Trustees; and
 - (5) The member makes a lump sum payment into the Annuity Savings Fund equal to the full liability of the service credits calculated on the basis of the assumptions used for purposes of the actuarial valuation of the retirement system's liabilities, and the calculation of the amount payable shall take into account the retirement allowance arising on account of the additional service credit commencing at the earliest age at which the member could retire on an unreduced retirement allowance, as determined by the Board of Trustees upon the advice of the actuary, plus an administrative fee to be determined by the Board of Trustees. Notwithstanding the

foregoing provisions of this subdivision that provide for the purchase of service credits, the terms "full cost", "full liability", and "full actuarial cost" include assumed annual post-retirement allowance increases, as determined by the Board of Trustees, from the earliest age at which a member could retire on an unreduced service allowance."

Section 3. G.S. 135-4(p1)(1) reads as rewritten:

- "(1) Notwithstanding any other provision of this Chapter, upon completion of five years of membership service, any member may purchase service previously rendered as a part-time teacher or employee of ~~the State~~, an employer as defined in G.S. 135-1(11) or G.S. 128-21(11), except for temporary or part-time service rendered while a full-time student in pursuit of a degree or diploma in a degree-granting program. Payment shall be made in a single lump sum in an amount equal to the full actuarial cost of providing credit for the service, together with interest and an administrative fee, as determined by the Board of Trustees on the advice of the Retirement System's actuary. Notwithstanding the provisions of G.S. 135-4(b), the Board of Trustees shall fix and determine by appropriate rules and regulations how much service in any year, as based on compensation, is equivalent to one year of service in proportion to "earnable compensation", but in no case shall more than one year of service be creditable for all service in one year. Service rendered for the regular school year in any district shall be equivalent to one year's service. Notwithstanding the foregoing provisions of this subdivision that provide for the purchase of service credits, the terms "full cost", "full liability", and "full actuarial cost" include assumed annual post-retirement allowance increases, as determined by the Board of Trustees, from the earliest age at which a member could retire on an unreduced service allowance."

Section 4. G.S. 135-4(s) reads as rewritten:

"(s) Credit at Full Cost for Temporary ~~State~~ Employment. -- In addition to the provisions of subsection (p) above, any member may purchase creditable service for State employment when classified as a temporary teacher or employee subject to the conditions that the:

- (1) Member was employed by an employer as defined in ~~G.S. 135-1(11)~~; G.S. 135-1(11) or G.S. 128-21(11);
- (2) Member's temporary employment met all other requirements of ~~G.S. 135-1(10) or (25)~~; or (25), or G.S. 128-21(10);
- (3) Member has completed five years or more of membership service;
- (4) Member acquires from the employer such certifications of temporary employment as are required by the Board of Trustees; and
- (5) Member makes a lump sum payment into the Annuity Savings Fund equal to the full liability of the service credits calculated on the basis of the assumptions used for purposes of the actuarial valuation of the Retirement System's liabilities and shall take into account the retirement allowance arising on account of the

additional service credit commencing at the earliest age at which the member could retire on an unreduced retirement allowance, as determined by the Board of Trustees upon the advice of the actuary, plus an administrative expense fee to be determined by the Board of Trustees. Notwithstanding the foregoing provisions of this subdivision that provide for the purchase of service credits, the terms "full cost", "full liability", and "full actuarial cost" include assumed annual post-retirement allowance increases, as determined by the Board of Trustees, from the earliest age at which a member could retire on an unreduced service allowance.

The provisions of this subsection shall also apply to the purchase of creditable service for State employment when classified as a permanent hourly employee in accordance with G.S. 126-5(c4)."

Section 5. This act becomes effective July 1, 1998.

In the General Assembly read three times and ratified this the 29th day of July, 1998.

Became law upon approval of the Governor at 9:42 p.m. on the 30th day of July, 1998.

H.B. 1541

SESSION LAW 1998-72

AN ACT TO ALLOW COMMUNITY COLLEGES TO USE THE PROCEEDS FROM THE SALE OR LEASE OF DONATED PROPERTY FOR SPECIFIC EDUCATIONAL PURPOSES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 115D-15 reads are rewritten:

"§ 115D-15. Sale, exchange or lease of ~~property~~ property; use of proceeds from donated property.

(a) When in the opinion of the board of trustees of any institution organized under ~~the provisions of this Chapter~~, the use of any ~~property, real or personal~~, real or personal property owned or held by ~~said~~ the board of trustees is unnecessary or undesirable for the purposes of ~~said~~ the institution, the board of trustees, subject to prior approval of the State Board of Community Colleges, may sell, exchange, or lease ~~such~~ the property in the same manner as is provided by law for the sale, exchange, or lease of school property by county or city boards of education or in accordance with ~~provisions of~~ G.S. 160A-274. The proceeds of any ~~such~~ sale or lease shall be used for capital outlay ~~purposes~~, purposes, except as provided in subsection (b) of this section.

(b) Subject to rules adopted by the State Board, if real or personal property is donated to a community college to support a specific educational purpose, the board of trustees may use the proceeds from the sale or lease of the property according to the terms of the donation. The board of trustees shall use the procedures authorized under Article 12 of Chapter 160A of the General Statutes when selling or leasing property under this subsection."

Section 2. Prior to January 1, 1999, the State Board of Community Colleges shall adopt rules to implement this act.

Section 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 28th day of July, 1998.

Became law upon approval of the Governor at 9:45 p.m. on the 30th day of July, 1998.

H.B. 1307

SESSION LAW 1998-73

AN ACT TO REQUIRE PAYMENT OF DELINQUENT TAXES FOR THE TOWN OF BANNER ELK BEFORE RECORDING DEEDS CONVEYING PROPERTY SUBJECT TO THE DELINQUENT TAXES.

The General Assembly of North Carolina enacts:

Section 1. Section 1 of Chapter 305 of the Session Laws of 1963, as rewritten by Section 7 of S.L. 1997-410, reads as rewritten:

"Section 1. The Register of Deeds of Avery County shall not receive for recordation any deed unless the following conditions are met:

- (1) The deed is accompanied by a certificate from the Avery County Tax Collector to the effect that all delinquent county taxes and all delinquent taxes for municipalities for which the county collects taxes have been paid with respect to the property described in the deed.
- (2) If the property described in the deed is located in whole or in part in the Town of Newland, the deed is accompanied by a certificate from the tax collector for the town to the effect that all delinquent municipal taxes have been paid with respect to the property.
- (3) If the property described in the deed is located in whole or in part in the Town of Banner Elk, the deed is accompanied by a certificate from the tax collector for the town to the effect that all delinquent municipal taxes have been paid with respect to the property."

Section 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 4th day of August, 1998.

Became law on the date it was ratified.

H.B. 1336

SESSION LAW 1998-74

AN ACT TO PROVIDE FOR ANNUAL AUDITS OF THE LAKE WACCAMAW LOCAL ABC SYSTEM.

The General Assembly of North Carolina enacts:

Section 1. Notwithstanding Section 6 of Chapter 540 of the 1967 Session Laws, the annual audit requirements of G.S. 18B-702(c) shall apply to the Lake Waccamaw ABC Board.

Section 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 4th day of August, 1998.

Became law on the date it was ratified.

H.B. 860

SESSION LAW 1998-75

AN ACT TO INCORPORATE THE TOWN OF CAROLINA SHORES
FROM AN AREA PREVIOUSLY ANNEXED INTO THE TOWN OF
CALABASH.

The General Assembly of North Carolina enacts:

Section 1. (a) The area annexed to the Town of Calabash by Section 1 of Chapter 593 of the Session Laws of 1989 is removed from the corporate limits of the town.

This section shall have no effect upon the validity of any liens of the Town of Calabash for ad valorem taxes or special assessments outstanding before the effective date of this section, and such liens may be collected or foreclosed upon after the effective date of this section as though the property were still within the corporate limits of the Town of Calabash. Notwithstanding the previous sentence, if the Town of Carolina Shores is not incorporated as provided by Sections 2 through 7 of this act, the ad valorem taxes for fiscal year 1998-99 for the area removed from the Town of Calabash by this section are released and the liens shall not attach.

(b) The Brunswick County Board of Elections shall conduct an election on September 15, 1998, for the purpose of submission to the qualified voters of District 1 of the Town of Calabash and to the qualified voters of District 2 of the Town of Calabash the question of whether or not the area described in subsection (a) of this section shall be removed from the corporate limits of the Town of Calabash. Notwithstanding G.S. 163-33(8), notice of the election shall be given at least 14 days prior to the last date to register for the election under G.S. 163-82.6(c)(2).

(c) In the election, the question on the ballot shall be:

"[] FOR [] AGAINST

Removal of Carolina Shores from the corporate limits of the Town of Calabash."

(d) In such election, if a majority of the votes cast in either District 1 or District 2 shall be cast "FOR" the question, then subsection (a) of this section is effective on the date that the Brunswick County Board of Elections determines the result of the election. In such case, from that date until the organizational meeting after the 1999 municipal election, the members of the Board of Commissioners of the Town of Calabash are Sam Bierworth, Forrest King, Keith Hardee, Robert Simmons, Rosemary Raleigh, and John Collins. They shall choose a Mayor from among the members of the Board to serve until the organizational meeting after the 1999 municipal election.

(e) In such election, if a majority of the votes cast in both District 1 and District 2 are not cast "FOR" the question, then subsection (a) of this section shall have no force and effect.

(f) Beginning with the organizational meeting after the 1999 municipal election, the Board of Commissioners of the Town of Calabash consists of four members.

Section 2. A Charter for the Town of Carolina Shores is enacted to read:

"CHARTER OF THE TOWN OF CAROLINA SHORES.

"CHAPTER I.**"INCORPORATION AND CORPORATE POWERS.**

"Sec. 1.1. Incorporation and Corporate Powers. The inhabitants of the Town of Carolina Shores are a body corporate and politic under the name 'Town of Carolina Shores'. Under that name they have all the powers, duties, rights, privileges, and immunities conferred and imposed upon cities by the general law of North Carolina.

"CHAPTER II.**"CORPORATE BOUNDARIES.**

"Sec. 2.1. Town Boundaries. Until modified in accordance with law, the boundaries of the Town of Carolina Shores are those annexed to the Town of Calabash by Section 1 of Chapter 593 of the Session Laws of 1989.

"CHAPTER III.**"GOVERNING BODY.**

"Sec. 3.1. Structure of Governing Body; Number of Members. The governing body of the Town of Carolina Shores is the Town Board of Commissioners and the Mayor. The Town Board of Commissioners has five members.

"Sec. 3.2. Manner of Electing Board. The qualified voters of the entire Town elect the members of the Board of Commissioners.

"Sec. 3.3. Term of Office of Board Members. (a) Alden Craft, George Dale, John Elliott, Robert Lovaty, and Edwin Mugridge are appointed as members of the Board of Commissioners to serve until the organizational meeting after the 1999 municipal election.

(b) In 1999 five members of the Board of Commissioners are elected. The three persons receiving the highest numbers of votes are elected to four-year terms and the two persons receiving the next highest numbers of votes are elected to two-year terms. In 2001 and quadrennially thereafter, two members of the council are elected to four-year terms. In 2003 and quadrennially thereafter, three members of the council are elected to four-year terms.

"Sec. 3.4. Selection of Mayor; Term of Office. The qualified voters of the entire Town elect the Mayor. Theodora Altreuter shall serve as Mayor to serve until the organizational meeting after the 1999 municipal election. A Mayor shall be elected in 1999 and quadrennially thereafter for a four-year term.

"CHAPTER IV.**"ELECTIONS.**

"Sec. 4.1. Conduct of Town Elections. The Town Board of Commissioners shall be elected on a nonpartisan basis and the results determined by the plurality method as provided by G.S. 163-292.

"CHAPTER V.**"ADMINISTRATION.**

"Sec. 5.1. Mayor-Board Plan. The Town of Carolina Shores operates under the Mayor-Board of Commissioners plan as provided by Part 3 of Article 7 of Chapter 160A of the General Statutes.

"CHAPTER VI.**"PLANNING.**

"Sec. 6.1. Extraterritorial Jurisdiction. The area to the north of North Carolina Highway 179 and Thomasboro Road which was within the extraterritorial jurisdiction of the Town of Calabash under Article 19 of Chapter 160A of the General Statutes and which is not in the Town limits of the Town of Calabash is placed within the extraterritorial jurisdiction of the Town of Carolina Shores under Article 19 of Chapter 160A of the General Statutes upon the adoption of a zoning ordinance by the Town of Carolina Shores.

"Sec. 6.2. Applicability of Calabash Planning Ordinances. Any regulations and powers of enforcement of the Town of Calabash under Article 19 of Chapter 160A of the General Statutes shall remain in effect within the Town of Carolina Shores until the earlier of: (i) the Town of Carolina Shores adopting such regulations, or (ii) 60 days after the incorporation is effective. During this period the Town of Carolina Shores may hold hearings and take any other measures that may be required in order to adopt its regulations for the area under that Article."

Section 3. From and after January 1, 1999, the citizens and property in the Town of Carolina Shores shall be subject to municipal taxes levied for the year beginning January 1, 1999, and for that purpose the Town shall obtain from Brunswick County a record of property in the area herein incorporated which was listed for taxes as of January 1, 1999, and the businesses in the Town shall be liable for privilege license tax from the effective date of the privilege license tax ordinance. The Town of Carolina Shores shall not levy any ad valorem taxes or privilege license taxes for the 1998-99 fiscal year.

Section 4. The boundaries of the Town of Calabash are as follows: BEGINNING at a point where the North Carolina-South Carolina State line intersects the Northern Right-of-Way of NC Highway 179 (60' R/W); thence with said Right-of-Way, S 88 16' 47"E, 419.92'; S 82 10' 09"E, 1022.11'; N 87 34' 25"E, 619.79'; N 77 30' 00"E, 205.42'; N 76 45' 07"E, 125.12' to a point where said Northern Right-of-Way intersects the Eastern Right-of-Way of SR 1168, Country Club Drive; thence with said eastern right-of-way N 03 49' 49"E, 61.55'; N 04 12' 15"E, 43.00'; N 03 54' 03"E, 218.87' to the Northwest corner of Tract #7, CLA Properties, Inc., as Recorded in Map Cabinet "K", Page 44 of the Brunswick County Register of Deeds; thence with the Northern line of Tract #7, N85 32'33"E, 762.30' to the Northeast corner of said Tract #7; thence with the Boundary lines of CLA Properties, Inc., as shown in Map Cabinet "K", Page 44 the following bearings and distances: N 85 32' 33"E, 250.00'; N 82 04' 15"E, 439.56'; N 87 00' 46"W, 779.48'; N 30 14'30"W, 1506.91'; N 60 36'40"E, 452.61'; N 30 33' 19"W, 1842.10' to the Southwest corner of Saltaire Village; thence with the Southern lines of Saltaire Village; N 60 58' 58"E, 698.43'; N 60 58'01"E, approximately 628.50' to a point in the Eastern Right-of-Way of SR 1167 (60'R/W) thence with said Right-of-Way in a Northerly direction to the Southwest corner of Carolina Shores Acreage Estates as Recorded in Map Book 13, Page 4 of the Brunswick County Register of Deeds; thence with the Southern Boundary line of Carolina Shores Acreage Estates approximately 1230' to a point; thence with the Western Boundary line of Acreage Estates, a common line with Hunters

Trace Subdivision as Recorded in Map Cabinet "O", Page 332, a southerly direction to a point projected to the Southern Right-of-way of SR 1165; thence with said Right-of-Way in an Easterly Direction to the Northwest corner of Calabash Acres as recorded in Map Book 9, Page 39 of The Brunswick County Register of Deeds; thence with the Western lines of Calabash Acres in a Southerly direction to a point in the Thread of the Calabash River; thence down said river and along the thread to a point where it intersects the North Carolina-South Carolina State line; thence with said State line N 44 37' 44"W to the Place and Point of BEGINNING. The boundaries also include any areas annexed to the Town of Calabash under Article 4A of Chapter 160A of the General Statutes after December 31, 1996, that might not be included in the description above.

Section 5. (a) The Brunswick County Board of Elections shall conduct an election on the same date as the referendum provided by Section 1 of this act, for the purpose of submission to the qualified voters of the area described in Section 2.1 of the Charter of Carolina Shores, the question of whether or not such area shall be incorporated as Carolina Shores. Registration for the election shall be conducted in accordance with G.S. 163-288. Notwithstanding G.S. 163-33(8), notice of the election shall be given at least 14 days prior to the last date to register for the election under G.S. 163-82.6(c)(2).

(b) In the election, the question on the ballot shall be:

"[] FOR [] AGAINST

Incorporation of Carolina Shores".

Section 6. In such election, if either a majority of the votes cast are not cast "FOR Incorporation of Carolina Shores", or if the question proposed by Section 1(c) of this act is not approved as provided by that section, then Sections 2 through 4 of this act shall have no force and effect.

Section 7. In such election, if a majority of the votes cast shall be cast "FOR Incorporation of Carolina Shores", and if the question proposed by Section 1(a) of this act is approved as provided by that section, then Sections 2 through 4 of this act shall become effective on the date that the Brunswick County Board of Elections determines the result of the election.

Section 8. (a) The Board of Commissioners of the Town of Calabash shall, prior to the date of the referendum provided by this act, adopt a fair and equitable plan for the distribution of the assets and liabilities, other than those set aside by subsection (b) of this section, of the Town of Calabash between the Town of Calabash and the Town of Carolina Shores. The plan must be approved by the Local Government Commission. If the Board of Commissioners of the Town of Calabash fails to adopt such a plan by the deadline provided by this subsection, then the Local Government Commission shall adopt a fair and equitable plan.

The plan adopted under this section shall include among the assets the ad valorem tax levy of the Town of Calabash for the 1998-99 fiscal year and any other shared revenues received by the Town of Calabash during the 1998-99 fiscal year (such as local option sales taxes), such that the proceeds may be divided between the two towns to support their budgets for that fiscal year.

(b) Property owned by the Town of Calabash on June 30, 1989, and the amount of fund balance of the Town of Calabash at the end of the 1988-89 fiscal year are excluded from the plan adopted under subsection (a) of this section.

(c) The plan is effective only if the Town of Carolina Shores is incorporated pursuant to Sections 2 through 7 of this act.

Section 9. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 5th day of August, 1998.

Became law on the date it was ratified.

H.B. 1433

SESSION LAW 1998-76

AN ACT TO EXTEND THE STUDY OF THE ORGANIZATIONAL STRUCTURE AND ADMINISTRATIVE PLACEMENT OF THE PROGRAMS IN THE DIVISION OF ENVIRONMENTAL HEALTH OF THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES AND TO EXPAND THE SCOPE OF THE STUDY TO INCLUDE THE ORGANIZATION, FUNCTIONS, POWERS, AND DUTIES OF THE VARIOUS BOARDS, COMMISSIONS, AND COUNCILS HAVING JURISDICTION OVER ENVIRONMENTAL, PUBLIC HEALTH, AND NATURAL RESOURCES PROGRAMS, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. Section 11A.127 of S.L. 1997-443 reads as rewritten:

"Section 11A.127. Pending ~~the results of~~ action by the General Assembly on the recommendations of the Environmental Review Commission resulting from the study to be undertaken by the Environmental Review Commission as provided in this Part, on-site wastewater functions, public drinking water programs, and environmental health programs shall remain in the Department of Environment and Natural Resources, the Division of Environmental Health, shall remain intact in the Department of Environment and Natural Resources, and the Department of Environment and Natural Resources shall not consolidate on-site wastewater functions or drinking water programs in the Division of Water Quality."

Section 2. Section 11A.128 of S.L. 1997-443 reads as rewritten:

"Section 11A.128. The Environmental Review Commission shall study the following issues and report its findings to the ~~1997 General Assembly, Regular Session 1998,~~ 1999 General Assembly, along with any legislation it proposes to address these issues:

- (1) The appropriate roles and financing of local and state agencies in reviewing, permitting, inspecting, and monitoring private wells, community wells, municipal wells, and municipal surface water supplies;
- (2) The appropriate roles and financing of local and State agencies in reviewing, permitting, inspecting, monitoring, and maintaining septic tanks, package wastewater treatment plants, municipal

- wastewater treatment plants, industrial treatment plants, and animal waste operations;
- (3) The appropriate roles and financing of local and State agencies in administering the various environmental health programs;
 - (4) The integration of State's review of the financial integrity of applicants for drinking water and wastewater discharge permits;
 - (5) Policies to monitor the quality and prevent and reduce pollution of groundwaters;
 - (6) Consistent State policies for cleaning up contaminated groundwater and soils;
 - (7) Coordination of adoption and development of policies by the Coastal Resources Commission, Environmental Management Commission, Commission on Health Services, Marine Fisheries Commission, and other commissions having roles in water quality or wastewater issues;
 - (8) Policies to monitor the quality and prevent and reduce pollution of surface waters;
 - (9) Organization of the State's water planning agencies;
 - (10) Technical and financial assistance to business, industry, local governments, and citizens;
 - (11) Policies to encourage water conservation;
 - (12) Policies to encourage regional water supply and wastewater treatment planning; and
 - (13) The role of the North Carolina Cooperative Extension Services, North Carolina Department of Agriculture, and the North Carolina Department of Transportation in the protection of water supplies.
 - (14) The organization, functions, powers, and duties of the various boards, commissions, and councils having jurisdiction over environmental, public health, and natural resources programs, including whether those functions, powers, and duties should be consolidated in a single commission."

Section 3. Section 11A.129 of S.L. 1997-443 reads as rewritten:

"Section 11A.129. The Secretary of Health and Human Services may reorganize the Department of Health and Human Services in accordance with G.S. 143B-10 and shall report as required by that section. In addition, the Department of Health and Human Services shall do the following:

- (1) Report to the Joint Legislative Commission on Governmental Operations by December 31, 1997, on the Department's progress in incorporating health functions and agencies into the Department;
- (2) Report to the General Assembly by ~~May 1, 1998~~, 1 February 1999 on additional changes, including proposed legislation necessary to effectuate the purposes of this Part including the findings of the Environmental Review Commission's study.
- (3) Report to the Joint Legislative Commission on Governmental Operations by ~~October 31, 1998~~, 1 February 1999 on any proposed changes in the Department's structure of boards and commissions not already implemented as a result of the

Environmental Review Commission's study or necessary to effectuate the purposes of this Part and to deliver services more efficiently;

- (4) Report to the General Assembly by February 1, 1999, on the Department's progress in adopting any rule changes necessary to effectuate the purposes of this Part and any proposed legislation necessary to change the structure of any boards and commissions as reported to the Joint Legislative Commission on Governmental Operations."

Section 4. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 30th day of July, 1998.

Became law upon approval of the Governor at 11:55 a.m. on the 6th day of August, 1998.

H.B. 1309

SESSION LAW 1998-77

AN ACT TO ALLOW BANNER ELK TO VOLUNTARILY ANNEX CERTAIN PROPERTY LOCATED WITHIN ITS EXTRATERRITORIAL PLANNING JURISDICTION EVEN THOUGH IT IS CLOSER TO THE VILLAGE OF SUGAR MOUNTAIN.

The General Assembly of North Carolina enacts:

Section 1. G.S. 160A-58.1(b)(2) does not apply to the Town of Banner Elk when the area proposed for annexation is closer to the Village of Sugar Mountain if the area proposed for annexation is within the extraterritorial jurisdiction of the Town of Banner Elk, as said extraterritorial jurisdiction exists on the date this act became law, under Article 19 of Chapter 160A of the General Statutes.

Section 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 10th day of August, 1998.

Became law on the date it was ratified.

H.B. 1453

SESSION LAW 1998-78

AN ACT TO ASSIST THE ROWAN-SALISBURY SCHOOLS WITH THE EXPEDITING OF PUBLIC SCHOOL FACILITIES.

The General Assembly of North Carolina enacts:

Section 1. Notwithstanding the provisions of Article 8 of Chapter 143 of the General Statutes, the Rowan-Salisbury Schools may select and negotiate with separate prime contractors to build a model school plan if the Rowan-Salisbury Schools determines that using the selection and negotiations process instead of competitive bidding will expedite the project, create an effective construction team, and control costs, quality, and schedule.

Section 2. This act shall apply to construction of a new middle school for approximately 800 students using 1996 State Bond funding with

design to begin in May, 1998, and with occupancy scheduled by April, 2000.

Section 3. This act is effective when it becomes law and expires on June 30, 2001.

In the General Assembly read three times and ratified this the 10th day of August, 1998.

Became law on the date it was ratified.

H.B. 1494

SESSION LAW 1998-79

AN ACT TO REPEAL THE SECTION OF THE CITY OF STATESVILLE'S CHARTER THAT PROHIBITS POLITICAL ACTIVITY BY CERTAIN CITY EMPLOYEES.

The General Assembly of North Carolina enacts:

Section 1. Section 5.16 of Article V of the Charter of the City of Statesville, being Chapter 289 of the 1977 Session Laws, is repealed.

Section 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 10th day of August, 1998.

Became law on the date it was ratified.

H.B. 1508

SESSION LAW 1998-80

AN ACT TO PERMIT THE CITY OF GREENVILLE TO HOLD POST-TOWING HEARINGS FOR ABANDONED OR JUNKED VEHICLES REMOVED FROM PRIVATE PROPERTY WITHOUT THE OWNER'S REQUEST.

The General Assembly of North Carolina enacts:

Section 1. G.S. 160A-303.2(a3) reads as rewritten:

"(a3) Hearing Procedure. -- Regardless of whether a city does its own removal and disposal of motor vehicles or contracts with another person to do so, the city shall provide a ~~prior~~ hearing procedure for the owner. For purposes of this subsection, the definitions in G.S. 20-219.9 apply.

- (1) If the city operates in such a way that the person who tows the vehicle is responsible for collecting towing fees, all provisions of Article 7A, Chapter 20, apply.
- (2) If the city operates in such a way that it is responsible for collecting towing fees, it shall:
 - a. Provide by contract or ordinance for a schedule of reasonable towing fees,
 - b. Provide a procedure for a prompt fair hearing to contest the towing,
 - c. Provide for an appeal to district court from that hearing,
 - d. Authorize release of the vehicle at any time after towing by the posting of a bond or paying of the fees due, and
 - e. Provide a sale procedure similar to that provided in G.S. 44A-4, 44A-5, and 44A-6, except that no hearing in addition

to the probable cause hearing is required. If no one purchases the vehicle at the sale and if the value of the vehicle is less than the amount of the lien, the city may destroy it."

Section 2. This act applies to the City of Greenville only.

Section 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 10th day of August, 1998.

Became law on the date it was ratified.

H.B. 1524

SESSION LAW 1998-81

AN ACT TO PROVIDE A FOUR-YEAR TERM FOR THE MAYOR OF MORGANTON AND TO MAKE TECHNICAL CORRECTIONS CONCERNING THAT OFFICE.

The General Assembly of North Carolina enacts:

Section 1. (a) Section 2.11 of the Charter of the City of Morganton, being Chapter 180, Session Laws of 1975, reads as rewritten:

"Chapter 2. Mayor.

"Sec. 2.11. Election and term of office.--The Mayor shall be elected as provided in this Charter for a term of ~~two (2) years~~, four years. The term of office of the Mayor shall commence on the day and hour of the organizational meeting held at the first regular meeting of the Council in December after the results of the election have been certified, and he shall serve until his successor has taken office."

(b) This section becomes effective beginning with the Mayor elected in the 1999 municipal election.

Section 2. Section 2.14(b) of the Charter of the City of Morganton, being Chapter 180, Session Laws of 1975, reads as rewritten:

"Sec. 2.14. Vacancy; absence or disability.--(a) A vacancy in the office of Mayor shall exist when a duly elected person fails to qualify or when a person who has been elected and has qualified dies, resigns, or no longer meets the requirements of Section 2.11 of this Charter, or is recalled. If a vacancy occurs in the office of Mayor, the Council shall by majority vote appoint some qualified person to fill the office for the remainder of the unexpired term. The Mayor Pro Tempore shall discharge the powers and duties of the office of Mayor until the office is filled, and he shall receive the same compensation as received by the office of Mayor during such period of service. The council seat of Mayor Pro Tempore is not vacant during any period in which the Mayor Pro Tempore discharges powers and duties of the office of Mayor.

(b) During the absence or disability of the Mayor, the Mayor Pro Tempore shall perform the powers and duties of the Mayor during the period that such absence or disability exists. The inability of the Mayor to perform the duties of his office shall be determined by the Council in accordance with the provisions of ~~G.S. 160A-70~~, G.S. 160A-70, except that the vote of the Mayor is not required in any such determination."

Section 3. Section 2.22(b) of the Charter of the City of Morganton, being Chapter 180, Session Laws of 1975, as amended by Chapter 299 of the Session Laws of 1977, reads as rewritten:

"(b) Except where a greater number is required by law, an affirmative vote equal to a majority of all the voting members of the council present and not excused from voting on a question ~~(including the mayor's vote in case of equal division)~~ shall be required to adopt any ordinance or any resolution or motion having the effect of an ordinance; provided, however, that no ordinance shall be finally adopted on the date it is introduced unless adopted by an affirmative vote equal to or greater than two thirds of all the council members, not including the mayor and any member excused from voting on the ~~question (but including the mayor's vote in case of equal division).~~ question. No member of the Council shall be excused from voting except on matters involving the consideration of his own official conduct or involving his financial interest. The question of compensation and allowances of members of the Council or the Mayor shall not be considered to involve a member's own financial interest or official conduct. In all other cases, a failure to vote by a member who is physically present in the council chamber, or who has withdrawn without being excused by a majority vote of the remaining members present, shall be recorded as an affirmative vote."

Section 4. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 10th day of August, 1998.

Became law on the date it was ratified.

H.B. 1554

SESSION LAW 1998-82

AN ACT TO ALLOW THE CITY OF MOUNT AIRY TO CONVEY CERTAIN DESCRIBED PROPERTY BY PRIVATE SALE.

The General Assembly of North Carolina enacts:

Section 1. Notwithstanding Article 12 of Chapter 160A of the General Statutes, the City of Mount Airy may convey by private negotiation and sale, with or without monetary consideration, any or all of its right, title, and interest in the following described property:

Being a 350.776 acre tract of land recorded in Plat Book 14 Page 97 of the Surry County Register of Deeds. The plat is entitled "The City of Mount Airy Annexation of May 15, 1997 Index# AX93" and was surveyed by Owen Lee Osborne, registered land surveyor, license number 3295. The property is shown as parcel 7162 on map 5919 of the Surry County Tax Maps.

Being a 25.954 acre tract of land recorded in Plat Book 14 Page 98 of the Surry County Register of Deeds. The plat is entitled "The City of Mount Airy Annexation of May 15, 1997 Index# AX93" and was surveyed by Owen Lee Osborne, registered land surveyor, license number 3295. The property is shown as parcel 7162 on map 5919 of the Surry County Tax Maps.

Section 2. The property shall be offered for private negotiation and sale with the following restrictions:

- (1) The purchaser of the property shall develop the property for purposes allowable under M-1 Industrial and B-4 Highway Business of the City's zoning ordinance.
- (2) The industrial use and construction schedule proposed by the purchaser shall be approved by a resolution passed by the City's Board of Commissioners at a regular meeting.
- (3) The consideration for the private sale shall be agreed upon by the Board of Commissioners and the purchaser, but shall not be less than the fair actual value of the property as determined by the Board based upon competent evidence.

Section 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 10th day of August, 1998.

Became law on the date it was ratified.

H.B. 1570

SESSION LAW 1998-83

AN ACT TO PERMIT THE TOWN OF LONG BEACH TO PASS ORDINANCES FOR DEVELOPING AND OPERATING PARKS ON DEAD-END STREETS.

The General Assembly of North Carolina enacts:

Section 1. In addition to any powers granted to the Town of Long Beach pursuant to Articles 15 and 18 of Chapter 160A of the General Statutes, the Town may pass ordinances providing for the development and operation of parks on municipal streets including those that dead-end on beaches, waterways, and at the ocean.

Section 2. This act applies to the Town of Long Beach, Brunswick County only.

Section 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 10th day of August, 1998.

Became law on the date it was ratified.

H.B. 1587

SESSION LAW 1998-84

AN ACT TO ALLOW THE TOWN OF STANFIELD AND THE CITY OF LOCUST TO COLLECT UTILITY BILLS AS IF THEY WERE TAXES DUE THE TOWN AND THE CITY.

The General Assembly of North Carolina enacts:

Section 1. Section 2 of Chapter 1070 of the 1989 Session Laws reads as rewritten:

"Sec. 2. This act applies to the ~~Town~~ Towns of Richfield and Stanfield and the City of Locust only."

Section 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 10th day of August, 1998.

Became law on the date it was ratified.

H.B. 1595

SESSION LAW 1998-85

AN ACT TO ALLOW THE TOWN OF WRIGHTSVILLE BEACH TO ADOPT ORDINANCES REQUIRING SPRINKLER SYSTEMS IN CERTAIN BUILDINGS.

The General Assembly of North Carolina enacts:

Section 1. Notwithstanding any provision of the North Carolina State Building Code or any general or local law to the contrary, including Chapter 143 of the General Statutes, a city may require, by ordinance, the installation of sprinkler systems in the following types of buildings that are constructed within the city or the city's extraterritorial planning jurisdiction after the effective date of any ordinance adopted by the city: (i) buildings in excess of 50 feet in height, (ii) nonresidential buildings regardless of height, and (iii) residential buildings that have three or more dwelling units regardless of height. The installation of sprinkler systems shall be completed within a reasonable period of time, which shall be provided in any ordinances adopted by the city.

Section 2. This act applies to the Town of Wrightsville Beach only.

Section 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 10th day of August, 1998.

Became law on the date it was ratified.

H.B. 1596

SESSION LAW 1998-86

AN ACT TO ALLOW THE TOWN OF WRIGHTSVILLE BEACH TO USE PROCEEDS FROM ON-STREET PARKING METERS IN THE SAME MANNER IN WHICH PROCEEDS FROM OFF-STREET PARKING FACILITIES ARE USED.

The General Assembly of North Carolina enacts:

Section 1. Notwithstanding G.S. 160A-301(a), a city may use the proceeds from parking meters on public streets in the same manner in which proceeds from off-street parking facilities are permitted under G.S. 160A-301(b).

Section 2. This act applies to the Town of Wrightsville Beach only.

Section 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 10th day of August, 1998.

Became law on the date it was ratified.

H.B. 1618

SESSION LAW 1998-87

AN ACT TO GRANT AUTHORITY TO THE CITY OF EDEN TO ADDRESS ABANDONED STRUCTURES IN THE SAME MANNER AS MUNICIPALITIES IN COUNTIES WITH A POPULATION OF OVER ONE HUNDRED SIXTY-THREE THOUSAND.

The General Assembly of North Carolina enacts:

Section 1. Section 2 of Chapter 733 of the 1995 Session Laws as amended by S.L. 1997-101 reads as rewritten:

"Sec. 2. This act applies to the Cities of Eden, Lumberton and Roanoke Rapids only."

Section 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 10th day of August, 1998.

Became law on the date it was ratified.

H.B. 1540

SESSION LAW 1998-88

AN ACT TO CONFORM THE CHARTER OF THE CITY OF HAVELOCK TO GENERAL LAW BY PROVIDING FOR AN ELECTION TO FILL THE REMAINDER OF THE UNEXPIRED TERM OF A COUNCIL MEMBER WHEN THE VACANCY OCCURS DURING THE FIRST TWO YEARS OF A FOUR-YEAR TERM.

The General Assembly of North Carolina enacts:

Section 1. Section 3(c) of the Charter of the City of Havelock, being Chapter 952 of the 1959 Session Laws, as rewritten by Chapter 152 of the 1977 Session Laws, reads as rewritten:

"(c) If a vacancy, for any reason, occurs on the board of commissioners, the remaining members shall, within 30 days, appoint a qualified person to fill the vacancy as provided herein. If the vacancy occurs in the first two years of a four-year term, and more than 30 days three days before the end of the filing period for that office as provided by the General Statutes prior to the regular municipal election, the person appointed shall serve until the next statutory organizational meeting of the board after the election. At the regular municipal election, ~~a person shall be elected for the unexpired term,~~ the candidate for commissioner who receives the next highest number of votes after the candidates for commissioner who are elected for full terms pursuant to subsection (a) of this section is elected to the unexpired term, said term to begin on the date of the organizational meeting. A voter may vote for no more than the number of full and unexpired terms to be filled at the election. A vacancy occurring otherwise shall be filled for the unexpired term."

Section 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 11th day of August, 1998.

Became law on the date it was ratified.

H.B. 1615

SESSION LAW 1998-89

AN ACT TO CLARIFY THE AUTHORITY OF THE COUNTY OF DURHAM TO FUND THE ESTABLISHMENT OF BIKEWAYS AND TRAILS THROUGHOUT THE COUNTY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 136-71.12 reads as rewritten:

"§ 136-71.12. *Funds.*

The General Assembly hereby authorizes the Department to include needed funds for the program in its annual budgets for fiscal years after June 30, 1975, subject to the approval of the General Assembly.

The Department is authorized to spend any federal, State, local or private funds available to the Department and designated for the accomplishment of this Article. ~~Cities and towns~~ Cities, towns, and counties may use any funds available."

Section 2. This act applies to the County of Durham only.

Section 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 11th day of August, 1998.

Became law on the date it was ratified.

H.B. 1256

SESSION LAW 1998-90

AN ACT ABOLISHING THE OFFICE OF CORONER IN ASHE, GASTON AND ROCKINGHAM COUNTIES.

The General Assembly of North Carolina enacts:

Section 1. The office of coroner in Gaston County is abolished.

Section 2. The office of coroner in Rockingham County is abolished.

Section 2.1. The office of coroner in Ashe County is abolished.

Section 3. Chapter 152 of the General Statutes is not applicable to Ashe County, Gaston County or Rockingham County.

Section 4. This act becomes effective upon the expiration of the terms of the current coroners in Ashe County, Gaston County and in Rockingham County, respectively.

In the General Assembly read three times and ratified this the 12th day of August, 1998.

Became law on the date it was ratified.

H.B. 1497

SESSION LAW 1998-91

AN ACT TO INCORPORATE THE TOWN OF CRANBERRY.

The General Assembly of North Carolina enacts:

Section 1. A Charter for the Town of Cranberry is enacted as follows:

"CHARTER OF TOWN OF CRANBERRY.

"CHAPTER I.

"INCORPORATION AND CORPORATE POWERS.

"Section 1.1. **Incorporation and Corporate Powers.** The inhabitants of the Town of Cranberry, which area is described in Section 2.1 of this Charter, are a body corporate and politic under the name 'Town of Cranberry.' Under that name they have all the powers, duties, rights, privileges, and immunities conferred and imposed on cities by the general law of North Carolina.

"CHAPTER II.**"CORPORATE BOUNDARIES.**

"Sec. 2.1. **Town Boundaries.** Until modified in accordance with the law, the boundaries of the Town of Cranberry are as follows: A circle with a radius of 4,200 feet as measured from a PK Nail set in a chiseled X located in the walkway of the Cranberry Baptist Church, said nail being located N 80° 18' 49" W 47.31' from the Northwest corner of the Church and N 50° 20' 28" W 47.93' from the Southwest corner of the Church and having NAD 83 Grid Coordinates of N 883,703.1137 and E 1,123,879.3799, except that it does not include any territory within the corporate limits of any other municipality on May 26, 1998.

"CHAPTER III.**"GOVERNING BODY.**

"Sec. 3.1. **Structure of Governing Body; Number of Members.** The governing body of the Town of Cranberry is the Board of Aldermen, which has five members and the Mayor.

"Sec. 3.2. **Temporary Officers.** Until the organizational meeting after the initial election in 1999 provided for by Section 4.1 of this Charter, Michael Phillip Jones is appointed Mayor and David Turbyfill, Linda T. Brown, Raymond Turbyfill, and J.W. Ollis are appointed members of the Board of Aldermen, and they shall possess and may exercise the powers granted to the Mayor and Board of Aldermen until their successors are elected or appointed and qualify pursuant to this Charter.

"Sec. 3.3. **Manner of Electing Board of Aldermen; Term of Office.** The qualified voters of the entire Town shall elect the members of the Board of Aldermen. In 1999 and biennially thereafter, five members of the Board of Aldermen are elected for two-year terms.

"Sec. 3.4. **Manner of Electing Mayor; Term of Office.** At its organizational meeting after each election, the Board of Aldermen shall elect one of its members as Mayor to serve at the pleasure of the Board of Aldermen.

"CHAPTER IV.**"ELECTIONS.**

"Sec. 4.1. **Conduct of Town Elections.** Town officers shall be elected on a nonpartisan basis and results determined by a plurality as provided in G.S. 163-292.

"CHAPTER V.**"ADMINISTRATION.**

"Sec. 5.1. **Town to Operate Under Mayor-Council Plan.** The Town of Cranberry operates under the Mayor-Council plan as provided in Part 3 of Article 7 of Chapter 160A of the General Statutes."

Section 2. From and after the effective date of this act, the citizens and property in the Town of Cranberry shall be subject to municipal taxes levied for the year beginning July 1, 1998, and for that purpose the Town shall obtain from Avery County a record of property in the area herein incorporated which was listed for taxes as of January 1, 1998. The Town may adopt a budget ordinance for fiscal year 1998-99 without following the timetable in the Local Government Budget and Fiscal Control Act, but shall follow the sequence of actions in the spirit of the act insofar as is practical.

For fiscal year 1998-99, ad valorem taxes may be paid at par or face amount within 90 days of adoption of the budget ordinance, and thereafter in accordance with the schedule in G.S. 105-360 as if the taxes had been due and payable on September 1, 1998.

Section 3. (a) The Avery County Board of Elections shall conduct an election on November 3, 1998, for the purpose of submission to the qualified voters of the area described in Section 2.1 of the Charter of the Town of Cranberry the question of whether or not such area shall be incorporated as the Town of Cranberry. Registration for the election shall be conducted in accordance with G.S. 163-288.2.

(b) In the election, the question on the ballot shall be:

"[] FOR [] AGAINST

Incorporation of the Town of Cranberry".

Section 4. In the election, if a majority of the votes are cast "FOR incorporation of the Town of Cranberry", Sections 1 and 2 of this act become effective on the date of the certification of the results of the election. Otherwise, Sections 1 and 2 of this act have no force and effect.

Section 5. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 12th day of August, 1998.

Became law on the date it was ratified.

H.B. 1396

SESSION LAW 1998-92

AN ACT TO AMEND THE PROVISIONS OF THE WINSTON-SALEM FIREMEN'S FUND ASSOCIATION.

The General Assembly of North Carolina enacts:

Section 1. Chapter 388 of the 1973 Session Laws, as amended by Chapter 15 of the 1977 Session Laws, Chapter 284 of the 1979 Sessions Laws, Chapter 647 of the 1981 Session Laws, Chapter 464 of the 1983 Session Laws, Chapter 508 of the 1987 Session Laws, and Chapter 793 of the 1989 Session Laws, reads as rewritten:

"Sec. 1. That the name of the Association herein established shall be Winston-Salem Firemen's Retirement Fund Association, hereinafter referred to as the Association. References to the Association as of a date prior to April 3, 1979, and following July 1, 1973, shall mean the Winston-Salem Fire-Public Safety Retirement Fund Association, which was the name of the Association during such period.

Sec. 2. Subject to the provisions of Section 16 hereof, the following persons shall automatically be members of the Association:

(a) As of July 1, 1987, any person who was a member of the Association following the close of business of the Association immediately preceding such date.

(b) As of July 1, 1987, and thereafter, any person not covered under (a) above who shall have been regularly and continuously employed full time by the Fire Department of the City of Winston-Salem (hereinafter referred to as the Fire Department), including any Fire Department mechanic or electrician, who shall have attained his 18th birthday and shall not have

attained his 40th birthday. Any person not covered under (a) above who was hired by the Fire Department prior to July 1, 1987, and continues to be employed by the Fire Department on such date, and who had attained his 30th birthday when hired but had not then attained his 40th birthday, may elect within 90 days following July 1, 1987, to become a member by contributing to the Association the sum of twelve dollars (\$12.00) per month from his date of hire by the Fire Department, plus interest at the rate of eight percent (8%), applicable to any payments made on and after July 1, 1989, per annum, computed on the amount accrued as of the end of each fiscal year of the Association.

(c) Notwithstanding the provisions of subsection (b) immediately preceding, as a condition to any person's becoming a member of the Association pursuant to the provisions of subsection 2(b) or 16(a), the Trustees may require such person to undergo a physical examination by a physician or physicians of good standing or repute selected by the Trustees. If it shall be found from such physician's report that such person is not in good physical or mental condition as of the date he would be eligible to become a member of the Association, such person shall be denied membership in the Association. The determinations of whether or not such person shall be required to undergo a physical examination and whether or not he is in good physical or mental condition shall be made by the Trustees. In making such determinations, all persons similarly situated shall be treated alike. The cost of any medical examination required pursuant to the provisions of this subsection (c) shall be borne by the person seeking membership in the Association.

Sec. 3. The Association may provide and raise funds in any legal manner to be used as a pension fund for such person or persons as may be entitled thereto under the provisions of this act and to such extent as is hereinafter set out.

Sec. 4. The governing body of the Association shall consist of a Board of Trustees five in number, four from the membership of the Fire Department, and one to be appointed by the Insurance Commissioner of the State of North Carolina.

Sec. 5. The Trustees from the membership of the Fire Department shall be elected by the members of the Fire Department for four-year terms. Such terms shall be staggered, so that two of the Trustees shall be elected during the month of January of each year ~~evenly divisible by two. Prior to each election, each fire company may, by majority vote of the active members of the company, nominate one candidate for election as Trustee. Only members of the Association, in good standing, who have~~ divisible evenly by two. Trustees that are slated to leave the Board are automatically candidates for reelection unless they choose not to serve another term. In addition, the elected Association Trustees shall select from the members of the Fire Department four members in good standing, each of whom continuously served in the Fire Department for a period of at least four years shall be eligible for election as Trustees. The two nominees receiving the highest number of votes cast in such election shall be elected, years. A general election shall then be held by the membership of the Fire Department to elect from the list of candidates two Trustees to serve a four-

year term. Each member of the Fire Department in good standing may cast two votes for the member's choice of nominees. The nominee receiving the highest number of votes in the election will be a member of the Winston-Salem Firemen's Relief Fund Board as well as the Association Board. In the event that a Trustee is unable to complete the Trustee's term, the nominee receiving the next highest number of votes in the last election held and who is not then serving as a Trustee shall complete the unexpired term of the Trustee who resigned from the Board. A tie shall be resolved by casting lots. In such election, each member of the Association in good standing may vote for two nominees. For purposes of this Section 5, the administrative offices of the Fire Department shall be deemed to be a fire company.

Sec. 6. Any Trustee may resign at any time by giving notice in writing to the other Trustees. Should any Trustee who is a member of the Fire Department cease to be a member of the Fire Department for any reason, he shall automatically cease to be a Trustee. With regard to any Trustee elected by the members of the Association who resigns or ceases to be a Trustee for any reason, his successor shall be elected as provided in Section 5 of this act; ~~provided, that such election shall be held as soon as practicable following such resignation or cessation, each member of the Association in good standing may vote for only one nominee, the one nominee receiving the highest number of votes shall be elected, and the election shall be only for the remaining unexpired term of the predecessor Trustee, act.~~ Should the Trustee who was appointed by the Insurance Commissioner of the State of North Carolina resign or cease to be a Trustee for any reason, his successor shall be appointed by the said Insurance Commissioner.

Sec. 7. The Board of Trustees is herein fully vested with the exclusive right and authority to pay out the funds of this Association, as provided for in this act. All matters and claims provided for under this act shall be passed upon by said Trustees and all decisions and actions of said Trustees shall be binding upon the Association and the members thereof. Every Trustee shall be entitled to one vote except the chairman of the Board of Trustees, who shall be entitled to vote only to break a tie. At every annual meeting of the Board of Trustees, the Trustees shall elect a chairman, vice-chairman, secretary and treasurer. The secretary and treasurer need not be Trustees, and the offices of secretary and treasurer may be combined into a single office, in the discretion of the Trustees. The annual meeting of the Board of Trustees shall be held as soon as is practicable following the end of each calendar year at such place and at such time as shall be determined by the Trustees.

Sec. 8. The secretary of the Association (or the secretary-treasurer if such offices shall be combined into a single office) shall be entitled to receive monthly compensation in an amount not to exceed one hundred dollars (\$100.00) per month, as determined by the Trustees. the amount of the monthly normal retirement benefit payable for the month for which compensation is payable, determined pursuant to Section 19 of this act. The Trustees, as such, including the chairman and the vice-chairman, shall serve without compensation. The Trustees may authorize reimbursement by the Association to any officer or Trustee of the Association for all expenses

incurred by such person in connection with services rendered in behalf of the Association.

Sec. 9. The Trustees shall elect a custodian of all funds and property of the Association, provided that such custodian shall have first offered proof satisfactory to the Trustees, by bond or otherwise, that it is and will be financially responsible for all property coming into its hands in a fiduciary capacity. Said custodian shall not release any of the funds or property of the Association for reasons other than investment of such funds or property except upon the written authorization of the Trustees.

The Trustees shall also elect an investment manager who may or may not be the same person as the custodian. Any such investment manager shall be a bank, or an insurance company, or an entity registered under the Investment Advisor's Act of 1940. The investment manager shall be authorized to invest and reinvest the funds or property of the Association in the investment manager's own judgment and discretion. The investment manager shall report to the Trustees on a periodic basis, but not less frequently than each calendar quarter. The investment manager (including said custodian when acting as investment manager) shall not be liable to the Association for any act of failure to act by it, except for gross negligence or willful misconduct.

Sec. 10. A special meeting of the Board of Trustees may be called by the chairman or vice-chairman, or by any two Trustees, upon 24 hours' written notice delivered in person to the members of said Board or mailed to the last known address of each member of said Board. A majority of the Trustees in office shall constitute a quorum at any meeting and a majority vote of the Trustees at a meeting at which a quorum is present shall constitute action by the Trustees.

Sec. 11. The chairman of the Board of Trustees, when present, shall preside at all meetings. In the absence of the chairman, the vice-chairman shall act as chairman.

Sec. 12. The secretary shall keep in complete form such data as shall be necessary for actuarial valuation of the funds of the Association and for checking the disbursements for and on behalf of the Association. He shall keep minutes of all proceedings of the Board of Trustees and of the Association, and the same shall be kept in a place selected by the Trustees. The treasurer of the Association shall post yearly at each fire station and at the office of ~~each police district~~, fire administration, as soon as practicable following the end of each year, a financial statement of the Association.

Sec. 13. The treasurer of the Association shall deposit with the custodian all funds and property that may come into his hands for the Association. The said treasurer shall obtain a receipt from the custodian for all funds and property delivered to the custodian by the treasurer. Said custodian shall invest and reinvest such funds and property as directed by the investment manager appointed under Section 9. Notwithstanding any contrary provisions of Section 9 or of this section, the Trustees are specifically authorized and empowered to invest funds of the Association by depositing such funds with the Winston-Salem Firemen's Credit Union on condition that the Association shall receive interest at an annual rate agreed upon by the Association and such credit union.

Sec. 14. The custodian and the investment manager shall receive compensation for services rendered as may be agreed upon from time to time in writing by the Trustees and by the custodian (with respect to services rendered by the custodian) or the investment manager (with respect to services rendered by the investment manager). The Trustees shall have the authority to employ legal counsel when, in the opinion of the Trustees, legal counsel is necessary. In case of such employment, said counsel shall be paid such fees as may be fair and reasonable as agreed upon in writing by the Trustees and the counsel so employed.

Sec. 15. On or before August 31, 1987, the Board of Trustees of the Winston-Salem Firemen's Relief Fund shall transfer to the Board of Trustees of the Winston-Salem Firemen's Retirement Fund Association out of properties and funds belonging to the Winston-Salem Firemen's Relief Fund the sum of fifty-four thousand dollars (\$54,000) in cash or assets. The assets so transferred pursuant to the immediately preceding sentence shall be transferred upon the basis of the fair market value thereof as of the date of transfer, and the particular assets to be transferred shall be determined by joint action of the Board of Trustees of the Winston-Salem Firemen's Relief Fund and the Board of Trustees of the Winston-Salem Firemen's Retirement Fund Association. All property of the Association is hereby relieved from any and all claims of the persons entitled to relief from the Winston-Salem Firemen's Relief Fund. The North Carolina Firemen's Association, its officers, members, boards and committees, are also hereby relieved of any claim of any kind whatsoever which may be based on past service, present service or future service in the Winston-Salem Fire Department. The Winston-Salem Firemen's Relief Fund and the officers, members, boards and committees of said Fund, are also hereby relieved of any claim of any kind whatsoever which may be based on past, present or future service in the Winston-Salem Fire Department, if any, so long as any claimant is entitled to benefits or pension under the provisions of this act.

Sec. 16. (a) Notwithstanding the provisions of subsection (b) immediately following, if a person who shall not be a member of the Association shall be transferred to the employment of the Fire Department from the employment of the City of Winston-Salem (hereinafter referred to as the City), the following provisions shall apply in determining whether he shall be a member of the Association following such transfer:

- (1) If he shall have attained at least his 18th birthday and shall not have attained his 40th birthday on the date of such transfer, he shall automatically become a member on such date of transfer. In determining such transferred employee's number of years of continuous employment by the City, employment with the City prior to such transfer shall be taken into account only if such employee shall elect to contribute to the Association the amount sum of (i) plus (ii) plus (iii), where (i) is the amount of twelve dollars (\$12.00) per month month, measured from the date of his hire by the City until earlier of the date of such transfer, plus interest transfer and June 30, 1998; (ii) is the aggregate amount that the person would have contributed, determined in accordance with Section 17 of this act, measured from July 1, 1998, until the

date of the transfer, if the transfer occurs on or after July 1, 1998; and (iii) is interest accrued at the rate of eight percent ~~(8%)~~, ~~applicable (8%)~~ with respect to any payments made on and after July 1, 1989, per annum, ~~computed~~ compounded annually on the amount accrued as of the end of each fiscal year of the Association.

- (2) If he shall have attained at least his 40th birthday on the date of transfer, but had not attained such birthday when last employed by the City, he may elect within 90 days following such transfer to become a member. If he elects to become a member, he shall contribute to the Association the amount he would have contributed if he had become a member on the day next preceding his 40th birthday. In addition, at the option of such employee, he may further elect to contribute such additional amount as he would have contributed prior to his 40th birthday if his employment with the City had been with the Fire Department. Any such contributions shall include interest at the rate of eight percent (8%), applicable to any payments made on and after July 1, 1989, per annum, computed on the amount accrued as of the end of each fiscal year of the Association.
- (3) If he shall have attained at least his 40th birthday when last employed by the City, he shall be ineligible to become a member following such transfer.
- (4) The elections specified in subdivisions (1) and (2) hereof shall be made in writing to the Trustees within 90 days following such transfer, and shall be irrevocable when made (subject to termination of membership upon subsequent separation from employment with the Fire Department). Any contributions (and interest) payable pursuant to such election shall be paid in cash in a lump sum at the time such election shall be filed.

(b) Notwithstanding the provisions of subsection (a) of Section 2 hereof, as soon as practicable following April 3, 1979, (but in no event more than 60 days thereafter), the Trustees gave each person who was then employed by the City of Winston-Salem as a Public Safety Officer an election to be a member or not to be a member of the Association. Each such election was to be made in accordance with procedures established by the Trustees and was irrevocable when made (subject to termination of membership upon a subsequent separation from the employment of the City, and subject to the provisions of subsection (a) of this Section 16). If a Public Safety Officer failed to file a timely election, he was deemed to have elected not to be a member. If a Public Safety Officer who was a member on the date of the election elected to discontinue membership (or shall have been deemed to have so elected), within 30 days following such date there should have been refunded to him the full amount of his prior contributions to the Association, if any, without interest. If a Public Safety Officer who failed to make contributions prior to the election date elected to be a member, he shall have within 30 days following such election paid to the Association the full amount he would have contributed if he had made required contributions during the entire period that he was eligible to be a member.

Such contributions included interest at the rate of six percent (6%) per annum, computed on the amount accrued as of the end of each fiscal year of the Association.

(c) Any member whose employment by the Fire Department as a Public Safety Officer shall be terminated on or after June 27, 1981, for any reason, including transfer to another department in the employment of the City, shall be terminated immediately as a member; provided, that any member who is transferred on or after July 1, 1981, to another department of the City in a fire-related job shall not become a terminated member if the following conditions are met: (i) within 15 days following the date of such transfer he shall file with the Trustees a written election to continue as a member; and (ii) such member shall be notified in writing by the secretary of the Association on or before the date of transfer of his right to make the election. If a terminated member shall reenter employment of the Fire Department, his eligibility to become a member shall be determined at that time in accordance with Section 2 hereof, except to the extent such individual may be entitled to elect to become a member upon a transfer of employment as provided in subsection (a) of this Section 16.

(d) In determining the number of years of continuous employment of a member, there shall be taken into account all years for which he shall make contributions in accordance with subsection (a) or (e) of this Section 16 or Section 19. For purposes of computing a member's years of continuous employment with the City, any period of unused sick leave with the Fire Department accrued by the member on the date of his retirement shall be deemed to be a period of continuous employment with the Fire Department.

(e) If any member of the Association was employed by the Fire Department as a cadet, such member's number of years of employment as a cadet may be added to the period of his continuous employment with the City if, by July 31, 1981, such member contributed to the Association an amount equal to twelve dollars (\$12.00) per month for the time he was a cadet, plus interest at the rate of six percent (6%) per annum, computed on the amount accrued as of the end of each fiscal year of the Association.

(f) If a member has been employed by the City continuously for a period of 10 years and has any military service, and is not otherwise treated under Section 26 as being in the employment of the City during the period of such military service, the period of such military service shall nevertheless be added to his period of continuous employment with the City upon such member's paying to the Association an amount equal to twelve dollars (\$12.00) for each month of such military service plus interest at the rate of eight percent (8%), applicable to any payments made on and after July 1, 1989, per annum, compounded annually. Such military service shall be limited to the initial period of active duty in the armed forces of the United States up to the time the member was first eligible to be separated or released therefrom, and subsequent periods of such active duty as required by the armed forces of the United States up to the date of first eligibility for separation or release therefrom. The member must submit evidence satisfactory to the Trustees of the military service claimed. Such election must be made within one year after the member first becomes eligible to contribute for such military service. Credit for military service under this

subsection shall not be considered service creditable under another retirement system for purposes of G.S. 128-26(a).

(g) If an individual who is an active participant in the North Carolina Local Governmental Employees' Retirement System (the 'System') shall terminate service with the employer enabling the individual to participate in the System (the 'System Employer'), and shall immediately enter the employment of the Fire Department, he may elect to have his period of service under the System considered as continuous employment with the Fire Department for purposes of this act; provided, that such election shall be permitted only if the individual was under age 40 when he entered the employment of the System Employer. This election shall be made in writing to the Trustees within 90 days of the individual's commencement of employment with the Fire Department (or, with respect to an individual who becomes employed by the Fire Department prior to July 1, 1989, this election shall be made on or before September 30, 1989). The election, if made, shall be accompanied by a cash contribution to the Association of ~~an amount~~ equal to the sum of (i) plus (ii) plus (iii), where (i) is the amount of twelve dollars (\$12.00) per month ~~during the period of his service under the System, plus interest measured from the date of the person's hiring by the City until the earlier of the transfer and June 30, 1998;~~ (ii) is the aggregate amount that the person would have contributed, determined in accordance with Section 17 of this act, measured from July 1, 1998, until the date of the transfer, if the transfer occurs on or after July 1, 1998; and (iii) is interest accrued at the rate of eight percent (8%) per annum, compounded annually on the amount accrued as of the end of each fiscal year of the Association. The election shall be irrevocable when made. If the election is not made in a timely fashion, the right to make the election is forfeited.

Sec. 17. The Treasurer of the City shall make a ~~monthly~~ deduction from the salary of each member of the Association ~~(except for members in the employ of the Police Department) due him by the City in the amount directed in writing by the Trustees, not to exceed twelve dollars (\$12.00) per month, and the~~ due him by the City. The amount of each such deduction shall be determined as of the first day of each fiscal year of the City, and shall be equal to the quotient obtained by dividing (i) the product, rounded to the nearest dollar, of .007 multiplied by the annual starting salary of a firefighter employed by the Fire Department in effect at the beginning of that fiscal year; by (ii) the number of payroll periods in that fiscal year. The amount so deducted shall be turned over ~~monthly~~ as soon as practicable after the applicable payroll period by the said Treasurer to the custodian of the Association as hereinbefore provided, and the Association shall have the authority to accept donations from any and all sources whatsoever.

Sec. 18. If at any time there shall not be sufficient assets in the retirement fund of the Association to pay fully the persons entitled to benefits provided herein, such persons shall be paid such benefits on a pro rata basis to the extent the assets of such fund will allow, as shall be determined by the Trustees; provided, that the assets of such fund determined as of the close of any fiscal year of the Association shall in no event be less than ~~one million five hundred thousand dollars (\$1,500,000), one hundred thirty percent (130%) of the present value of current retirees determined as of the close of~~

that fiscal year. Effective on or after July 1, 1998, the Trustees shall obtain a written report from the Association's actuary as of July 1 of each year evenly divisible by two, or more frequently if the Trustees deem advisable, setting forth the present value of the assets of the fund and the present value of current liabilities of current retirees.

Sec. 19. Whenever any member of the Association has been employed by the City continuously for a period ~~off of~~ at least 30 years, such member may make written application to the trustees for his normal retirement benefit, and whenever any member of the Association has been employed by the City continuously for a period of at least 25 years but not more than 30 years, such member may make written application to the Trustees for his early retirement benefit; provided, however, that such member must retire from the service of the City to receive such benefits. The normal and early retirement benefits of such member shall be a monthly pension for the remainder of his life, as provided hereinbelow. For this purpose and for the purpose of Section 20 hereof, a member shall be deemed to have been employed by the City continuously if such member shall have been employed continuously by any combination of the Fire Department or Police Department (but only such employment by the Police Department as is described in subsection 16(b) and (c) hereof), and the transfer of a member from the employ of one of such organizations to the employ of the other such organization shall not be deemed to be a termination of employment by the City. Provided, that if a member has at least 25 years of employment with the City, but such service is not continuous solely because of a leave of absence lasting not more than a year and not described in Section 26, such member shall be deemed to have continuous employment with the City during such leave of absence; and provided further, that if a member has less than 25 years of employment with the City but the sum of his years of employment with the City plus

any leave of absence lasting not more than one year and not described in Section 26, equals or exceeds 25 years, the period of such leave shall be deemed to be continuous employment with the City if such member contributes to the Association twelve dollars (\$12.00) for each month he was on such leave, plus interest at the rate of eight percent (8%), applicable to any payments made on and after July 1, 1989, per annum, computed on the amount accrued as of the end of each fiscal year of the Association.

Effective beginning July 1, 1989, and ending June 30, 1990, the amount of the monthly pension for each member who is entitled to receive a normal retirement benefit (including members who retired prior to July 1, 1989) shall be two hundred dollars (\$200.00). Effective beginning July 1, 1990, and ending June 30, 1998, the amount of the monthly pension for each member who is entitled to receive a normal retirement benefit, including members who retired prior to July 1, 1990, shall be two hundred fifteen dollars (\$215.00). Effective on and after July 1, 1998, the amount of the monthly pension for each member who is entitled to receive a normal retirement benefit (including members who retired prior to that date) shall be two hundred five dollars (\$205.00). The amount of the monthly pension for each member who is entitled to receive an early retirement benefit as of any date prior to July 1, 1998, shall be the product of (1) and (2), where

(1) is the applicable percentage listed in the following table based on his years of continuous employment at his early retirement date, and (2) is the amount of the payment that he would have received as a normal retirement benefit under this section as of that date:

Years of Employment at Retirement Date	Percentage of Normal Retirement Benefit
25	85%
26	88%
27	91%
28	94%
29	97%

Effective on and after July 1, 1998, the amount of the monthly pension for each member who began receiving an early retirement benefit prior to July 1, 1998, shall be further reduced by multiplying the monthly pension amount by 0.9535.

Effective on and after July 1, 1998, the amount of the monthly pension of each member who retires on or after that date and is entitled to receive an early retirement benefit shall be the product of (1) the applicable percentage listed in the following table based on the member's years of continuous employment at the member's early retirement date, and (2) the amount of the payment that the member would have received as a normal retirement benefit under this section as of that date:

<u>Years of Employment at Retirement Date</u>	<u>Percentage of Normal Retirement Benefit</u>
<u>25</u>	<u>70%</u>
<u>26</u>	<u>76%</u>
<u>27</u>	<u>82%</u>
<u>28</u>	<u>88%</u>
<u>29</u>	<u>94%</u>

Payment shall be subject to the provisions of Section 18 of this act. Section 16(d) governs the determinations of a member's years of continuous employment.

Sec. 20. Whenever any member of the Association becomes totally and permanently unable, because of infirmity or disease affecting mind or body (whether or not induced by injury) to perform his duties for the City, which inability shall be determined by a medical examination by a physician or physicians of good standing and repute selected by the Trustees, he shall be deemed to be a disabled member. If a disabled member has been employed by the City for at least five full years prior to suffering disability, he shall be entitled to retire and receive a monthly benefit payable for the remainder of his life.

Effective beginning July 1, 1989, and ending June 30, 1989, the monthly benefit of a member who retires as a disabled member (including a member who retired as a disabled member prior to July 1, 1989) shall equal eight dollars (\$8.00) times his years of service but in no event more than two hundred dollars (\$200.00) per month. Effective on and after July 1, 1990, beginning July 1, 1990, and ending June 30, 1998, the monthly benefit of a

member (including a member who retires as a disabled member prior to this date) shall equal eight dollars and sixty cents (\$8.60) times his years of service, but in no event more than two hundred fifteen dollars (\$215.00) per month. Effective on and after July 1, 1998, the monthly benefit of a member who retires as a disabled member, including a member who retires as a disabled member prior to July 1, 1998, shall equal eight dollars and twenty cents (\$8.20) times his years of service, but in no event more than two hundred five dollars (\$205.00) per month. For this purpose only, years of service shall mean the number of his earned years of service in the employment of the City (as determined pursuant to Section 16(d) of this act). Payments shall be subject to the provisions of Section 18 of this act.

Notwithstanding the foregoing provisions of this Section 20, in the case of a disabled member whose disability shall arise out of injuries incurred in fire safety activities, such as fire fighting, fire training and fire inspection, such monthly benefit shall in no event be less than forty dollars (\$40.00) per month, whether or not such disabled member was employed by the City for at least five years prior to suffering such disability. The determination of whether such disability arises out of injuries incurred in fire safety activities shall be made by the Trustees.

Sec. 21. Any disabled member of the Association who retires under Section 19 hereof and who had not been employed by the City for a period of at least 30 years prior to retirement, shall be subject to call by the Trustees for reexamination by a physician of good standing and repute selected by the Trustees and, if based upon such examination it is determined by the Trustees that such member is able to perform active duties for the City, such member may be reinstated and receive for his services the same compensation paid to other employees of the City of his rank or classification. If such member, upon being called by the Trustees, shall refuse to submit to an examination or shall refuse to be reinstated to active duty in the employ of the City after being found to be able to perform active duty, such benefits as he is then receiving under the provisions of this act shall immediately terminate and his membership in this Association shall automatically terminate. But in the event that such member is physically unable to resume active employment, or in the event he is able and willing to resume active employment but no job with the City is open for him at such time, his pension or compensation shall continue until there shall be an opening for such member and he is reemployed by the City. For the purpose of this Section 21, employment with the City shall mean only employment with the Fire Department or Police Department (but employment with the Police Department shall be included only with regard to any such member who was employed with the Police Department prior to his retirement under Section 20 hereof).

Sec. 22. When any member of the Association shall resign or be dismissed from employment by the City (which for this purpose shall include only employment with the Fire Department or Police Department), he shall receive a sum of money equal to all monies paid into the Association by him. Upon the death of any member of the Association while in the employment of the City, a sum of money equal to all monies paid into the Association by such deceased member shall be paid to the beneficiary or

beneficiaries designated in writing by such deceased member, or in default thereof, to his estate. If, after retirement, a member of the Association shall die before having received an amount equal to his contributions to the Association, there shall be paid to the beneficiary or beneficiaries designated by such member, or in default thereof to his estate, an amount equal to his contributions less the sum of retirement benefits paid to such member. The reimbursements provided in this Section 22 shall be in cash in a lump sum, unless otherwise determined by the Trustees with the consent in writing of the recipient thereof less interest, if any, previously contributed to the Association by the member pursuant to Section 16 or Section 19.

Sec. 23. No amount payable or held by the Association under this act for the benefit of any member or beneficiary thereof shall be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance or charge, nor shall any amount payable or held under this act for the benefit of any member or beneficiary thereof be in anywise liable for his debts, contracts, liabilities, engagements, or torts, nor be subject to any legal process to levy upon or attach, but the provisions of this Section 22 shall not be applicable as regards any dealings with or obligations to the Winston-Salem Firemen's Credit Union.

Sec. 24. Out of the amount paid to the Insurance Commissioner of the State of North Carolina upon the amount of all premiums on fire and lightning policies covering property situated in the corporate limits of the City, the Insurance Commissioner of the State of North Carolina shall pay annually to the Treasurer of the City ninety-five percent (95%), and the Treasurer of the City shall immediately pay over the same to the treasurer of the Association, or if the treasurer of the Association shall so direct, the Treasurer of the City shall pay such amount directly to the custodian.

Sec. 25. No member of this Association or Trustee shall be personally liable in any manner whatsoever to any person, association, firm or corporation by reason of his connection with, or act or acts on behalf of, said Association, unless such act or acts are fraudulently committed.

Sec. 26. If a member of the Association, or an employee of the Fire Department or Police Department who is not a member of the Association due to failure to meet the minimum age requirements of subsection 2(b) hereof, is granted a leave of absence from employment by the City on account of accidental injury or temporary illness, military service during time of active warfare, compulsory military service in time of peace, or other good cause, for the purpose of this act such employee shall be deemed to have remained in the employment of the City during the period of such leave of absence or any extension thereof if he shall return to active service with the City promptly following the end of the period of such leave of absence or extension thereof. During such leave of absence or extension thereof, the Treasurer of the City shall make no deductions from the salary, if any, of such member, and such member shall not otherwise be required to make any contributions to the Association during or with respect to such period.

Sec. 27. If any person entitled to benefits under this act shall be physically or mentally incapable of receiving or acknowledging receipt of such benefits, the Trustees, upon receipt of satisfactory evidence of such

incapacity and that another person or institution is maintaining such person entitled to benefits, and that no guardian or committee has been appointed for him, may cause any benefits otherwise payable to him to be made to such person or institution so maintaining him.

Sec. 28. The provisions of this act shall be administered on an equitable and nondiscriminatory basis, it being the intent hereof that where the Trustees are given discretionary powers, such powers shall be exercised in an equitable manner and so as to prevent discrimination between persons similarly situated. All assets of the Association shall be administered for the exclusive benefit of the members of the Association and their beneficiaries, and as a fund to provide for such members or beneficiaries the benefits provided in this act. It shall be impossible for any part of the principal or income of the retirement fund of the Association to be used for or diverted to purposes other than for the exclusive benefit of the members of the Association or their beneficiaries as provided in this act; except that the Trustees may use such assets to pay the reasonable expenses incurred in administering the said fund and any debts, liabilities or obligations of said fund. The assets and income of the fund shall be exempt from all taxes, including income taxes, imposed by the State of North Carolina or any political subdivision thereof.

Sec. 29. The fiscal year of the Association shall end on June 30 of each year.

Sec. 30. Throughout this act, use of the masculine pronoun shall include the feminine.

Sec. 31. If any part or section of this act shall be declared unconstitutional or invalid by the Supreme Court of North Carolina or any other court of last resort of competent jurisdiction it shall in no wise affect the remainder of this act, and the remainder shall remain in full force and effect.

Sec. 32. All the laws and clauses of laws in conflict with the provisions of this act are hereby repealed."

Section 2. None of the provisions of this act shall create an additional liability for the Winston-Salem Firemen's Fund Association unless sufficient funds are available to pay fully for the liability.

Section 3. This act becomes effective July 1, 1998.

In the General Assembly read three times and ratified this the 13th day of August, 1998.

Became law on the date it was ratified.

H.B. 1538

SESSION LAW 1998-93

AN ACT TO AUTHORIZE THE TOWN OF SHARPSBURG TO PARTICIPATE IN THE LOCAL GOVERNMENTAL EMPLOYEES' RETIREMENT SYSTEM WITHOUT PROVIDING PRIOR SERVICE CREDITS TO ITS EMPLOYEES.

The General Assembly of North Carolina enacts:

Section 1. Notwithstanding any other provision of law, if the Town of Sharpsburg becomes a member of the Local Governmental Employees'

Retirement System, the town council may elect to provide no prior service credit in the Retirement System for employees employed prior to the date that the town becomes a participating employer in the Retirement System, and no prior service credit will be given for employees of the town for service provided to the town prior to its participation in the Retirement System, nor shall the town be required to pay for any prior service credits for its employees.

Section 2. This act applies only to the Town of Sharpsburg.

Section 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 13th day of August, 1998.

Became law on the date it was ratified.

H.B. 1624

SESSION LAW 1998-94

AN ACT TO REPEAL THE LAW PERMITTING THE TAKING OF CATFISH AND EELS IN TRAPS FROM THE HIGHWAY 258 BRIDGE TO THE OCCONEECHEE GUT IN NORTHAMPTON COUNTY.

The General Assembly of North Carolina enacts:

Section 1. Chapter 1278 of the 1981 Session Laws is repealed.

Section 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 13th day of August, 1998.

Became law on the date it was ratified.

S.B. 1252

SESSION LAW 1998-95

AN ACT TO SIMPLIFY AND MODIFY PRIVILEGE LICENSE AND EXCISE TAXES AND RELATED PERMIT FEES.

The General Assembly of North Carolina enacts:

Section 1. The title of Article 2 of Chapter 105 of the General Statutes reads as rewritten:

"ARTICLE 2.

"~~Schedule B. License Privilege Taxes.~~"

Section 2. G.S. 105-33 reads as rewritten:

"§ 105-33. Taxes under this Article.

(a) General. -- Taxes in this Article ~~or schedule shall be~~ are imposed as State license taxes for the privilege of carrying on the business, exercising the privilege, or doing the act ~~named, named, and nothing in this Article shall be construed to relieve any person, firm, or corporation from the payment of the tax prescribed in this Article or schedule; Provided, the obtaining of a license required by this Article shall not of itself authorize the practice of a profession, business, or trade for which a State qualification license is required.~~

(b) ~~If the business made taxable or the privilege to be exercised under this Article is carried on at two or more separate places, a separate State~~

~~license for each place is required. License Taxes. -- A license tax imposed by this Article is an annual tax. The tax is due by July 1 of each year. The tax is imposed for the privilege of engaging in a specified activity during the fiscal year that begins on the July 1 due date of the tax. The full amount of a license tax applies to a person who, during a fiscal year, begins to engage in an activity for which this Article requires a license. Before a person engages in an activity for which this Article requires a license, the person must obtain the required license.~~

~~(c) Every State license issued under this Article or schedule shall be for 12 months, shall expire on the thirtieth day of June of each year, and shall be for the full amount of tax prescribed; provided, that where the tax is levied on an annual basis and the licensee begins such business or exercises such privilege after the first day of January and prior to the thirtieth day of June of each year, then such licensee shall be required to pay one half of the tax prescribed other than the tax prescribed to be computed and levied upon a gross receipts and/or percentage basis for the conducting of such business or the exercising of such privilege to and including the thirtieth day of June, next following. Every county, city and town license issued under this Article or schedule shall be for 12 months, and shall expire on the thirty-first day of May or thirtieth day of June of each year as the governing body of such county, city or town may determine; Provided, that where the licensee begins such business or exercises such privilege after the expiration of seven months of the current license year of such municipality, then such licensee shall be required to pay one half of the tax prescribed other than the tax prescribed to be computed upon a gross receipts and/or percentage basis. Other Taxes. -- The taxes imposed by this Article on a percentage basis or another basis are due as specified in this Article.~~

~~(d) The State license issued under G.S. 105-41 is a personal privilege to conduct the profession or business named in the State license, is not transferable to any other person, and does not limit the person named in the license to conducting the profession or business and exercising the privilege named in the State license to the county and/or city and location specified in the State license, unless otherwise provided in this Article. Other licenses issued for a tax year for the conduct of a business at a specified location shall upon a sale or transfer of the business be deemed a sufficient license for the succeeding purchaser for the conduct of the business specified at that location for the balance of the tax year. If the holder of a license under this Article moves the business for which a license tax has been paid to another location, a new license may be issued to the licensee at a new location for the balance of the license year, upon surrender of the original license for cancellation and the payment of a fee of five dollars (\$5.00) for each license certificate reissued.~~

~~(e) Repealed by Session Laws 1989, c. 584, s. 1.~~

~~(f) All State taxes imposed by this Article shall be paid to the Secretary of Revenue, or to one of his deputies; shall be due and payable on or before the first day of July of each year, and after such date shall be deemed delinquent, and subject to all the remedies available and the penalties imposed for the payment of delinquent State license and privilege taxes; provided, that if a person, firm, or corporation begins any business or the~~

~~exercise of any privilege requiring a license under this Article or schedule after the thirtieth day of June and prior to the thirtieth day of the following June of any year, then such person, firm, or corporation shall apply for and obtain a State license for conducting such business or exercising any such privilege in advance, and before the beginning of such business or the exercise of such privilege; and a failure to so apply and to obtain such State license shall be and constitute a delinquent payment of the State license tax due, and such person, firm, or corporation shall be subject to the remedies available and penalties imposed for the payment of such delinquent taxes.~~

~~(g) The taxes imposed and the rates specified in this Article or schedule shall apply to the subjects taxed on and after the first day of June, 1939, and prior to said date the taxes imposed and the rates specified in the Revenue Act of 1937 shall apply.~~

~~(h) Liability Upon Transfer. -- It shall be the duty of a A grantee, transferee, or purchaser of any business or property subject to the State license taxes imposed in this Article to must make diligent inquiry as to whether the State license tax has been paid, but when such paid. If the business or property has been granted, sold, transferred, or conveyed to an innocent purchaser for value and without notice that the vendor owed or is liable for any of the State license taxes imposed under this Article, such the property, while in the possession of such the innocent purchaser, shall not be is not subject to any lien for such State license the taxes.~~

~~(i) The tax collector of a county or city shall issue licenses required under this Article by the governing body of the county or city and shall collect the taxes due for these licenses.~~

~~(j) Any person, firm, or corporation who shall wilfully make any false statement in an application for a license under any section of this Article or schedule shall be guilty of a Class 1 misdemeanor, which may include a fine which shall not be less than the amount of tax specified under such section, and shall be in addition to the amount of such tax.~~

~~(k) Repealed by Session Laws 1987, c. 190."~~

Section 3. G.S. 105-33.1 reads as rewritten:

"§ 105-33.1. *Definitions.*

The following definitions apply in this Article:

(1) City. -- Defined in G.S. 105-228.90.

~~(1) (1a) Code.~~ -- Defined in G.S. 105-228.90.

~~(2) Municipality. -- A municipal corporation organized under the laws of this State.~~

(3) Person. -- Defined in G.S. 105-228.90.

(4) Secretary. -- ~~The Secretary of Revenue.~~ Defined in G.S. 105-228.90."

Section 4. G.S. 105-37.1 reads as rewritten:

"§ 105-37.1. *Amusements -- Forms of amusement not otherwise taxed.*

(a) Every ~~person, firm, or corporation~~ person engaged in the business of giving, ~~offering~~ offering, or managing any form of entertainment or amusement not otherwise taxed ~~or specifically exempted in under this Article, for which an admission is charged, shall pay an annual license tax of fifty dollars (\$50.00) for each room, hall, tent or other place where such admission charges are made.~~

~~In addition to the license tax levied above, such person, firm, or corporation shall pay an additional a tax upon the gross receipts of such the business at the rate of three percent (3%). Reports shall be made to the Secretary of Revenue, in such form as he may prescribe, within the first 10 days of each month covering all such the gross receipts for the previous month, and the additional tax herein levied shall be paid monthly at the time such the reports are made. The annual license tax herein levied shall be treated as an advance payment of the tax upon gross receipts herein levied, and the annual license tax shall be applied as a credit upon or advance payment of the gross receipts tax.~~

Every person, firm, or corporation person giving, offering, or managing any dance or athletic contest of any kind, except high school and elementary school athletic contests, for which an admission fee in excess of fifty cents (50c) is charged, shall pay ~~an annual license tax of fifty dollars (\$50.00) for each location where such charges are made, and, in addition, a tax upon the gross receipts derived from admission charges at the rate of three percent (3%). The additional tax upon gross receipts shall be levied and collected in accordance with such regulations as may be made by the Secretary of Revenue, as prescribed by the Secretary. No tax shall be levied on admission fees for high school and elementary school contests.~~

~~Dances and other amusements actually promoted and managed by civic organizations and private and public secondary schools, shall not be subject to the license tax imposed by this section and the first one thousand dollars (\$1,000) of gross receipts derived from such events shall be exempt from the gross receipts tax herein levied when the entire proceeds of such dances or other amusements are used exclusively for the school or civic and charitable purposes of such organizations and not to defray the expenses of the organization conducting such dance or amusement. The mere sponsorship of dance or other amusement by such a school, civic, or fraternal organization shall not be deemed to exempt such dance or other amusement as provided in this paragraph, but the exemption shall apply only when the dance or amusement is actually managed and conducted by the school, civic, or fraternal organization and the proceeds are used as herein before required.~~

~~Dances and other amusements promoted and managed by a qualifying corporation that operates a center for the performing and visual arts are exempt from the license tax and the gross receipts tax imposed under this section if the dance or other amusement is held at the center. "Qualifying corporation" means a corporation that is exempt from income tax under G.S. 105-130.11(a)(3). "Center for the performing and visual arts" means a facility, having a fixed location, that provides space for dramatic performances, studios, classrooms and similar accommodations to organized arts groups and individual artists. This exemption shall not apply to athletic events.~~

~~The license and gross receipts taxes imposed by this section do not apply to a person, firm, or corporation that is exempt from income tax under Article 4 of this Chapter and is engaged in the business of operating a teen center. A "teen center" is a fixed facility whose primary purpose is to provide recreational activities, dramatic performances, dances, and other amusements exclusively for teenagers.~~

(b) Counties shall not levy any license tax on the business taxed under this section, but cities and towns may levy a license tax not in excess of one half the base tax levied herein, twenty-five dollars (\$25.00).

~~(c) No tax shall be collected pursuant to this section with respect to entertainments or amusements offered or given on the Cherokee Indian reservation when the person, firm or corporation giving, offering or managing such entertainment or amusement is authorized to do business on the reservation and pays the tribal gross receipts levy to the tribal council.~~

~~(d) It is not the purpose of this Article to discourage agricultural fairs in the State, and to further this cause, no carnival company taxable under this section may play a "still date" in any county where there is a regularly advertised agricultural fair, 30 days prior to the dates of the fair. This subsection does not restrict the date on which a fair or tobacco festival may be held if (i) it is held by a veteran's organization or post chartered by Congress or organized and operated on a statewide or nationwide basis and (ii) the organization or post has held the fair or festival annually since before July 1, 1988."~~

Section 5. G.S. 105-38 reads as rewritten:

"§ 105-38. *Amusements -- Circuses, menageries, wild west, dog and/or pony shows, etc. Circuses and other traveling amusements.*

(a) Every person, firm, or corporation person engaged in the business of exhibiting performances, such as a circus, menagerie, wild west show, dog and/or pony show, or any other similar show, exhibition exhibition, or performance similar thereto, performance not taxed in other sections of this Article, shall apply for and obtain a State license from the Secretary of Revenue for the privilege of engaging in such business, and pay for such license a tax of fifty dollars (\$50.00) for each day or part of a day for each place in the State where exhibitions or performances are to be given, pay a tax upon the gross receipts of the business at the rate of three percent (3%).

(b) Every person, firm, or corporation person by whom any show or exhibition taxed under this section is owned or controlled shall file with the Secretary of Revenue, Secretary, not less than five days before entering this State for the purpose of such the exhibitions or performances therein, a statement, under oath, setting out in detail the dates, times, and places for the exhibitions or performances. such information as may be required by the Secretary of Revenue covering the places in the State where exhibitions or performances are to be given, the character of the exhibitions, and such other and further information as may be required. Upon receipt of such statement, the Secretary of Revenue shall fix and determine the amount of State license tax with which such person, firm, or corporation is chargeable, shall endorse his findings upon such statement, and shall transmit a copy of such statement and findings to each such person, firm, or corporation to be charged, to the sheriff or tax collector of each county in which exhibitions or performances are to be given, and to the division deputy of the Secretary of Revenue, with full and particular instructions as to the State license tax to be paid. Before giving any of the exhibitions or performances provided for in such statement, the person, firm, or corporation making such statement shall pay the Secretary of Revenue the tax so fixed and determined. If one or more of such exhibitions or performances included in such statement and for

~~which the tax has been paid shall be canceled, the Secretary of Revenue may, upon proper application made to him, refund the tax for such canceled exhibitions or performances. Every such person, firm, or corporation shall give to the Secretary of Revenue a notice of not less than five days before giving any of such exhibitions or performances in each county.~~

~~(c) The sheriff of each county in which such exhibitions or performances are advertised to be exhibited shall promptly communicate such information to the Secretary of Revenue; and if the statement required in this section has not been filed as provided herein, or not filed in time for certified copies thereof, with proper instructions, to be transmitted to the sheriffs of the several counties and the division deputy, the Secretary of Revenue shall cause his division deputy to attend at one or more points in the State where such exhibitions or performances are advertised or expected to exhibit, for the purpose of securing such statement prescribed in this section, of fixing and determining the amount of State license tax with which such person, firm, or corporation is taxable, and to collect such tax or give instructions for the collection of such tax.~~

~~(d) Every such person, firm, or corporation by whom or which any such exhibition or performance described in this section is given in any county, city or town, or within five miles thereof, wherein is held an annual agricultural fair, during the week of such annual agricultural fair, shall pay a State license of one thousand dollars (\$1,000) for each exhibition or performance in addition to the license tax first levied in this section, to be assessed and collected by the Secretary of Revenue or his duly authorized deputy.~~

~~(e) The provisions of this section, or any other section of this Article, shall not be construed to allow without the payment of the tax imposed in this section, any exhibition or performance described in this section for charitable, benevolent, educational, or any other purpose whatsoever, by any person, firm, or corporation who is engaged in giving such exhibitions or performances, no matter what terms of contract may be entered into or under what auspices such exhibitions or performances are given. It being the intent and purpose of this section that every person, firm, or corporation who or which is engaged in the business of giving such exhibitions or performances, whether a part or all of the proceeds are for charitable, benevolent, educational, or other purposes or not, shall pay the State license tax imposed in this section.~~

~~(f) Upon all performances taxable under this section there is levied, in addition to the license tax levied in this section, a tax upon the gross receipts of such business at the rate of three percent (3%). The license tax herein levied shall be treated as an advance payment of the tax upon gross receipts herein levied, and the license tax shall be applied as a credit upon or advance payment of the gross receipts tax. The Secretary of Revenue may adopt such regulations as may be necessary to effectuate the provisions of this section and shall prescribe the form and character of reports to be made, and shall have such authority of supervision as may be necessary to effectuate the purpose of this Subchapter.~~

~~(g) Repealed.~~

(h) ~~Counties, cities, and towns~~ Counties and cities may levy a license tax on the business taxed under this section not in excess of ~~one half of the license tax levied by the State, but shall not levy a parade tax or a tax under subsection (g) of this section,~~ twenty-five dollars (\$25.00) for each day or part of a day for each place where exhibitions or performances are to be given."

Section 5.1. Article 2 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"§ 105-38.1. Amusements - Motion picture shows.

(a) Tax. -- A privilege tax at the rate of one percent (1%) is imposed on the gross receipts of a person who is engaged in the business of operating a motion picture show for which an admission is charged. The tax is due when a return is due. A return is due by the 10th day after the end of each month and covers the gross receipts received during the previous month. If a person offers an entertainment or amusement that includes both a motion picture taxable under this section and an entertainment or amusement taxable under G.S. 105-37.1 or G.S. 105-38, the tax in G.S. 105-37.1 or G.S. 105-38, as appropriate, applies to the entire gross receipts and the tax levied in this section does not apply.

(b) Exemption. -- Gross receipts from a motion picture show promoted and managed by a qualifying corporation that operates a center for the performing and visual arts is exempt from the tax imposed under this section if the motion picture is shown at the center and if the showing of motion pictures is not the primary purpose of the center. As used in this subsection, 'qualifying corporation' and 'center for the performing and visual arts' have the same meaning as in G.S. 105-40."

Section 6. G.S. 105-40 reads as rewritten:

"§ 105-40. Amusements -- ~~Certain exhibitions, performances, and entertainments~~ exempt from license tax.

The following forms of amusement are exempt from the taxes imposed under this Article:

- (1) All exhibitions, performances, and entertainments, except as in this Article expressly mentioned as not exempt, produced by local talent exclusively, and for the benefit of religious, charitable, benevolent or educational purposes, ~~and where as long as no compensation is paid to such local talent shall be exempt from the State license tax,~~ the local talent.
- (2) The North Carolina Symphony Society, Incorporated, as specified in G.S. 140-10.1.
- (3) All exhibits, shows, attractions, and amusements operated by a society or association organized under the provisions of Chapter 106 of the General Statutes where the society or association has obtained a permit from the Secretary to operate without the payment of taxes under this Article.
- (4) All outdoor historical dramas, as specified in Article 19C of Chapter 143 of the General Statutes.
- (5) All elementary and secondary school athletic contests, dances, and other amusements.

- (6) The first one thousand dollars (\$1,000) of gross receipts derived from dances and other amusements actually promoted and managed by civic organizations when the entire proceeds of the dances or other amusements are used exclusively for civic and charitable purposes of the organizations and not to defray the expenses of the organization conducting the dance or amusement. The mere sponsorship of a dance or another amusement by a civic or fraternal organization does not exempt the dance or other amusement, because the exemption applies only when the dance or amusement is actually managed and conducted by the civic or fraternal organization.
- (7) All dances and other amusements promoted and managed by a qualifying corporation that operates a center for the performing and visual arts if the dance or other amusement is held at the center. 'Qualifying corporation' means a corporation that is exempt from income tax under G.S. 105-130.11(a)(3). 'Center for the performing and visual arts' means a facility, having a fixed location, that provides space for dramatic performances, studios, classrooms, and similar accommodations to organized arts groups and individual artists. This exemption does not apply to athletic events.
- (8) A person that is exempt from income tax under Article 4 of this Chapter and is engaged in the business of operating a teen center. A 'teen center' is a fixed facility whose primary purpose is to provide recreational activities, dramatic performances, dances, and other amusements exclusively for teenagers.
- (9) All entertainments or amusements offered or given on the Cherokee Indian reservation when the person giving, offering, or managing the entertainment or amusement is authorized to do business on the reservation and pays the tribal gross receipts levy to the tribal council."

Section 7. G.S. 105-41 reads as rewritten:

"§ 105-41. *Attorneys-at-law and other professionals.*

(a) Every individual in this State who practices a profession or engages in a business and is included in the list below must obtain from the Secretary a statewide license for the privilege of practicing the profession or engaging in the business. A license required by this section is not transferable to another person. The tax for each license is fifty dollars (\$50.00); the tax does not apply to an individual who is at least 75 years old. (\$50.00).

- (1) An attorney-at-law.
- (2) A physician, a veterinarian, a surgeon, an osteopath, a chiropractor, a chiropodist, a dentist, an ophthalmologist, an optician, an optometrist, or another person who practices a professional art of healing.
- (3) A professional engineer, as defined in G.S. 89C-3.
- (4) A registered land surveyor, as defined in G.S. 89C-3.
- (5) An architect.
- (6) A landscape architect.

- (7) A photographer, a canvasser for any photographer, or an agent of a photographer in transmitting photographs to be copied, enlarged, or colored.
- (8) A real estate broker or a real estate salesman, as defined in G.S. 93A-2. A real estate broker or a real estate salesman who is also a real estate appraiser is required to obtain only one license under this section to cover both activities.
- (9) A real estate appraiser, as defined in G.S. 93E-1-4. A real estate appraiser who is also a real estate broker or a real estate salesman is required to obtain only one license under this section to cover both activities.
- (10) A person who solicits or negotiates loans on real estate as agent for another for a commission, brokerage, or other compensation.
- (11) A mortician or embalmer licensed under G.S. 90-210.25.

(b) ~~Persons practicing the professional art of healing for a fee or reward shall be exempt from the payment of the license tax levied in the preceding paragraph of this section, if such persons are adherents of established churches or religious organizations and confine their healing practice to prayer or spiritual means.~~ The following persons are exempt from the tax:

- (1) A person who is at least 75 years old.
- (2) A person practicing the professional art of healing for a fee or reward, if the person is an adherent of an established church or religious organization and confines the healing practice to prayer or spiritual means.
- (3) A blind person engaging in a trade or profession as a sole proprietor. A 'blind person' means any person who is totally blind or whose central visual acuity does not exceed 20/200 in the better eye with correcting lenses, or where the widest diameter of visual field subtends an angle no greater than 20 degrees. This exemption shall not extend to any sole proprietor who permits more than one person other than the proprietor to work regularly in connection with the trade or profession for remuneration or recompense of any kind, unless the other person in excess of one so remunerated is a blind person.

(c) Every person engaged in the public practice of accounting as a principal, or as a manager of the business of public accountant, shall pay for such license fifty dollars (\$50.00), and in addition shall pay a license of twelve dollars and fifty cents (\$12.50) for each person employed who is engaged in the capacity of supervising or handling the work of auditing, devising or installing systems of accounts.

~~(d) Every licensed mortician or embalmer shall in like manner apply for and obtain from the Secretary of Revenue a statewide license for practicing his profession, whether for himself or in the employ of another, and pay for such license a tax of fifty dollars (\$50.00).~~

(e) Licenses issued under this section are issued as personal privilege licenses and shall not be issued in the name of a firm or ~~corporation~~. ~~Provided, that a corporation.~~ A licensed photographer having a located place of business in this State, ~~shall be~~ State is liable for a license tax on each agent or ~~solicitor~~, solicitor employed by ~~him~~ the photographer for

soliciting business. If any person engages in more than one of the activities for which a privilege tax is levied by this section, such the person shall be liable for a privilege tax with respect to each activity engaged in.

(f) Repealed by Session Laws 1981, c. 17.

~~(g) License Revocable for Failure To Pay Tax. Whenever it shall be made to appear to any judge of the superior court that any person practicing any profession for which the payment of a license tax is required by this section has failed, or fails, to pay the professional tax levied in this section, and execution has been issued for the same by the Secretary of Revenue and returned by the proper officer "no property to be found," or returned for other cause without payment of the tax, it shall be the duty of the judge presiding in the superior court of the county in which such person resides, upon presentation therefor, to cause the clerk of said court to issue a rule requiring such person to show cause by the next session of court why such person should not be deprived of license to practice such profession for failure to pay such professional tax. Such rule shall be served by the sheriff upon said person 20 days before the next session of the court, and if at the return term of court such person fails to show sufficient cause, the said judge may enter a judgment suspending the professional license of such person until all such tax as may be due shall have been paid, and such order of suspension shall be binding upon all courts, boards and commission having authority of law in this State with respect to the granting or continuing of license to practice any such profession.~~

(h) ~~Counties, cities, or towns shall~~ Counties and cities may not levy any license tax on the business or professions taxed under this ~~section;~~ section. ~~and the statewide license herein provided for shall privilege the licensee to engage in such business or profession in every county, city, or town in this State.~~

(i) Obtaining a license required by this Article does not of itself authorize the practice of a profession, business, or trade for which a State qualification license is required."

Section 8. Chapter 93B of the General Statutes is amended by adding the following new section to read:

"§ 93B-15. Payment of license fees by members of the armed forces.

An individual who is serving in the armed forces of the United States and to whom G.S. 105-249.2 grants an extension of time to file a tax return is granted an extension of time to pay any license fee charged by an occupational licensing board or as a condition of retaining a license granted by the board. The extension is for the same period that would apply if the license fee were a tax."

Section 9. G.S. 105-83 reads as rewritten:

"§ 105-83. Installment paper dealers.

(a) Every person engaged in the business of dealing in, buying, or discounting installment paper, notes, bonds, contracts, or evidences of debt, where debt for which, at the time of or in connection with the execution of said the instruments, a lien is reserved or taken upon personal property located in this State to secure the payment of such the obligations, shall apply for and obtain from the Secretary a State license for the privilege of engaging in such business or for the purchasing of such obligations in this

State, and shall pay for such license ~~an annual tax of one hundred dollars (\$100.00).~~

(b) ~~In addition to obtaining a State license from the Secretary, each person subject to the tax levied in subsection (a) shall submit to the Secretary quarterly no later than the twentieth day of January, April, July, and October of each year, upon forms prescribed by the Secretary, a full, accurate, and complete statement, verified by the officer, agent, or person making the statement, of the total face value of the installment paper, notes, bonds, contracts, and evidences of debt obligations dealt in, bought, or discounted within the preceding three calendar months and, at the same time, shall pay a tax of two hundred and seventy-five thousandths of one percent (.275%)~~ two hundred seventy-seven thousandths of one percent (.277%) of the face value of these obligations.

(c) If any person deals in, buys, or discounts any obligations described in this section without ~~obtaining the license required by this section or~~ paying a tax imposed by this section, the person may not bring an action in a State court to enforce collection of an obligation dealt in, bought, or discounted during the period of noncompliance with this section until the person ~~obtains the license and~~ pays the amount of tax, penalties, and interest due.

(d) This section does not apply to corporations liable for the tax levied under G.S. 105-102.3.

(e) ~~Counties, cities, and towns~~ Counties and cities shall not levy any license tax on the business taxed under this section."

Section 10. G.S. 105-102.3 reads as rewritten:

"§ 105-102.3. *Banks.*

There is ~~hereby~~ imposed upon every bank or banking association, including each national banking association, that is operating in this State as a commercial bank, an industrial bank, a savings bank created other than under Chapter 54B of the General Statutes or the Home Owners' Loan Act of 1933 (12 U.S.C. §§ 1461-68), a trust company, or any combination of such facilities or services, and whether such bank or banking association, hereinafter to be referred to as a bank or banks, ~~be is~~ is organized, under the laws of the United States or the laws of North Carolina, in the corporate form or in some other form of business organization, an annual privilege ~~tax~~ tax. A report and the privilege tax are due by the first day of July of each year on forms provided by the Secretary. The tax rate is in the amount of thirty dollars (\$30.00) for each one million dollars (\$1,000,000) or fractional part thereof of total assets held as hereinafter provided, provided in this section. The assets upon which the tax is levied shall be determined by averaging the total assets shown in the four quarterly call reports of condition (consolidating domestic subsidiaries) for the preceding calendar year as required by bank regulatory authorities; provided, authorities. If a bank has been in operation less than a calendar year, then the assets upon which the tax is levied shall be determined by multiplying the average of the total assets by a fraction, the denominator of which is 365 and the numerator of which is the number of days of operation, however, where a new bank commences operations within the State there shall be levied and paid an annual privilege tax of one hundred dollars (\$100.00) until such

~~bank shall have made four quarterly call reports of condition (consolidating domestic subsidiaries) for a single calendar year; provided further, however, where~~ If a bank operates an international banking facility, as defined in G.S. 105-130.5(b)(13), the assets upon which the tax is levied shall be reduced by the average amount for the taxable year of all assets of the international banking facility which are employed outside the United States, as computed pursuant to G.S. 105-130.5(b)(13)c. For an out-of-state bank with one or more branches in this State, or for an in-state bank with one or more branches outside this State, the assets of the out-of-state bank or of the in-state bank upon which the tax is levied shall be reduced by the average amount for the taxable year of all assets of the out-of-state bank or of the in-state bank which are employed outside this State. The tax imposed ~~hereunder~~ in this section shall be for the privilege of carrying on the businesses herein defined on a statewide basis regardless of the number of places or locations of business within the State. ~~Counties, cities and towns shall~~ Counties and cities may not levy a license or privilege tax on the businesses taxed under this section, nor on the business of an international banking facility as defined in subsection (b)(13) of G.S. 105-130.5."

Section 11. G.S. 105-102.6(d) reads as rewritten:

"(d) Tax. -- Every publisher shall apply for and obtain from the Secretary a newsprint publisher tax reporting number and shall file an annual report with the Secretary by January 31 of each year. The report shall include the following information for the preceding calendar year:

- (1) Tonnage of virgin newsprint consumed.
- (2) Tonnage of nonvirgin newsprint consumed.
- (3) Gross tonnage of newsprint consumed.
- (4) Itemized percentages of recycled postconsumer recovered paper contained in tonnage of nonvirgin newsprint consumed.
- (5) Recycled content tonnage.
- (6) Recycled content percentage.
- (7) Recycling tonnage.

In addition, each publisher whose recycled content percentage for a calendar year is less than the applicable minimum recycled content percentage provided in subsection (c) shall pay a tax of fifteen dollars (\$15.00) on each ton by which the publisher's recycled content tonnage falls short of the tonnage of recycled postconsumer recovered paper needed to achieve the applicable minimum recycled content percentage provided in subsection (c). This tax is due when the report is filed. No county or ~~municipality~~ city may impose a license tax on the business taxed under this section."

Section 12. G.S. 105-107 is repealed.

Section 13. G.S. 105-109(a) is repealed.

Section 14. G.S. 105-113.68(a)(6) reads as rewritten:

"(6) 'License' means a certificate, issued pursuant to this Article ~~by the Secretary or by a city or county,~~ that authorizes a person to engage in a phase of the alcoholic beverage industry."

Section 15. G.S. 105-113.69 reads as rewritten:

"§ 105-113.69. License tax; effect of license.

The taxes imposed in ~~Parts 2 and 3~~ Part 3 of this Article are license taxes on the privilege of engaging in the activity authorized by the license.

Licenses issued by the State or a local government under this Article authorize the licensee to engage in only those activities that are authorized by the corresponding ABC permit. The activities authorized by each retail ABC permit are described in Article 10 of Chapter ~~18B~~, 18B of the General Statutes and the activities authorized by each commercial ABC permit are described in Article 11 of that Chapter."

Section 16. G.S. 105-113.70 reads as rewritten:

"§ 105-113.70. *Issuance, duration, transfer of license.*

(a) Issuance, Qualifications. -- Each person who receives an ABC permit shall obtain the corresponding local license, if any, under this Article. ~~All State licenses are issued by the Secretary.~~ All local licenses are issued by the city or county where the establishment for which the license is sought is located. The information required to be provided and the qualifications for a ~~State or~~ local license are the same as the information and qualifications required for the corresponding ABC permit. Upon proper application and payment of the prescribed tax, issuance of a ~~State or~~ local license is mandatory if the applicant holds the corresponding ABC permit. No local license may be issued under this Article until the applicant has received from the ABC Commission the applicable permit for that activity, and no county license may be issued for an establishment located in a city in that county until the applicant has received from the city the applicable license for that activity.

(b) Duration. -- All licenses issued under this section are annual licenses for the period from May 1 to April 30.

(c) Transfer. -- A license may not be transferred from one person to another or from one location to another.

(d) License Exclusive. -- ~~Neither the State nor a~~ A local government may not require a license for activities related to the manufacture or sale of alcoholic beverages other than the licenses stated in this Article."

Section 17. G.S. 105-113.72 is repealed.

Section 18. G.S. 105-113.74 is repealed.

Section 19. G.S. 105-113.75 is repealed.

Section 20. G.S. 105-113.76 is repealed.

Section 21. G.S. 105-113.79 reads as rewritten:

"§ 105-113.79. *City wholesaler license.*

A city may require city malt beverage and wine wholesaler licenses for businesses located inside the city, but may not require a license for a business located outside the city, regardless whether that business sells or delivers malt beverages or wine inside the city. The city may charge an annual tax of not more than twenty-five percent (25%) of the annual tax for the equivalent State license as set by G.S. 105-113.74, thirty-seven dollars and fifty cents (\$37.50) for a city malt beverage wholesaler or a city wine wholesaler license."

Section 22. G.S. 105-113.80(a) reads as rewritten:

"(a) Beer. -- An excise tax of fifty-three and one hundred seventy-seven one thousandths cents (53.177¢) per gallon is levied on the sale of malt ~~beverages at the rate of:~~ beverages.

- (1) ~~Forty eight and three hundred eighty seven one thousandths cents (48.387¢) per gallon on malt beverages in barrels holding at least seven and three fourths gallons; and~~
- (2) ~~Fifty three and three hundred seventy six one thousandths cents (53.376¢) per gallon on malt beverages in cans, bottles, barrels, or other containers holding less than seven and three fourths gallons."~~

Section 23. G.S. 105-113.83(c) reads as rewritten:

"(c) ~~Railroad Sales License. Sales.~~ -- ~~This section does not affect the duty of a holder of a State railroad sales license to remit excise taxes on alcoholic beverages sold by that licensee in this State, as provided in G.S. 105-113.76. Each person operating a railroad train in this State on which alcoholic beverages are sold must submit monthly reports of the amount of alcoholic beverages sold in this State and must remit the applicable excise tax due on the sale of these beverages when the report is submitted. The report is due on or before the 15th day of the month following the month in which the beverages are sold. The report must be made on a form prescribed by the Secretary."~~

Section 24. G.S. 105-113.84 reads as rewritten:

"§ 105-113.84. *Invoices; report of resident brewery, resident winery, or nonresident vendor.*

(a) Invoice. -- ~~When a~~ A resident brewery, resident winery, or nonresident vendor that sells or delivers wine or malt beverages to a North Carolina wholesaler or importer, importer he shall give that wholesaler or importer two copies of the sales ~~invoice. He~~ invoice and shall also file one copy with the Secretary. The invoice shall ~~state;~~ state all of the following:

- (1) The name and address of the ~~licensee~~ permit holder making the sale or ~~delivery;~~ delivery.
- (2) The name, address, and ~~license~~ permit number of the wholesaler or importer receiving the ~~beverages;~~ beverages.
- (3) The kind of beverage sold or ~~delivered;~~ and delivered, including the number of cases.
- (4) The exact quantities of beverages sold or delivered, specified by size and type of ~~container.~~ containers.
- (5) The total gallons of malt beverages, the total liters of unfortified wine, and the total liters of fortified wine.

(b) Monthly Report. -- Each resident brewery, resident winery, or nonresident vendor that sells or delivers wine or malt beverages in North Carolina shall prepare and file with the Secretary a monthly report, on a form provided by the Secretary, stating the exact quantities of those beverages sold to North Carolina wholesalers or importers during the previous month. ~~The report shall specify the size and type of containers sold.~~ The report shall be filed on or before the 15th day of the month following the month in which the beverages are sold or delivered."

Section 25. G.S. 105-113.86 reads as rewritten:

"§ 105-113.86. *Bonds.*

(a) Wholesalers and Importers. -- ~~Each holder of a malt beverage A wholesaler license, a wine wholesaler license, or an or importer license~~ shall furnish a bond in an amount of not less than five thousand dollars

(\$5,000) nor more than fifty thousand dollars (~~\$50,000~~) to cover his tax liability. (~~\$50,000~~). The bond shall be conditioned on compliance with this Article, shall be payable to the State, shall be in a form acceptable to the Secretary, and shall be secured by a corporate surety or by a pledge of obligations of the federal government, the State, or a political subdivision of the State. The Secretary shall proportion the bond amount to the anticipated tax liability of the wholesaler or importer. The Secretary shall periodically review the sufficiency of bonds furnished by wholesalers and importers, and shall increase the amount of a bond required of a wholesaler or importer when the amount of the bond furnished no longer covers the wholesaler's or importer's anticipated tax liability.

(b) Nonresident Vendors. -- The Secretary may require the holder of a nonresident vendor ~~license~~ ABC permit to furnish a bond in an amount not to exceed two thousand dollars (\$2,000). The bond shall be conditioned on compliance with this Article, shall be payable to the State, shall be in a form acceptable to the Secretary, and shall be secured by a corporate surety or by a pledge of obligations of the federal government, the State, or a political subdivision of the State."

Section 26. G.S. 105-113.89 reads as rewritten:

"§ 105-113.89. *Other applicable administrative provisions.*

The administrative provisions of Article 9 of this Chapter apply to this Article. ~~In addition, the following administrative provisions of Schedule B of this Chapter apply to the license taxes levied under this Article: G.S. 105-103, 105-104, 105-105, 105-108, 105-109, 105-110, and 105-112. In applying the provisions of Schedule B to this Article, the month "May" shall be substituted for the month "July."~~

Section 27. G.S. 105-249 is repealed.

Section 28. G.S. 105-249.1 is repealed.

Section 29. G.S. 18B-902 reads as rewritten:

"§ 18B-902. *Application for permit; fees.*

(a) Form. -- An application for an ABC permit shall be on a form prescribed by the Commission and shall be notarized. The application shall be signed and sworn to by each person required to qualify under G.S. 18B-900(c).

(b) Investigation. -- Before issuing a new permit, the Commission, with the assistance of the ALE Division, shall investigate the applicant and the premises for which the permit is requested. The Commission may request the assistance of local ABC officers in investigating applications. An applicant shall cooperate fully with the investigation.

(c) False Information. -- Knowingly making a false statement in an application for an ABC permit shall be grounds for denying, suspending, revoking or taking other action against the permit as provided in G.S. 18B-104 and shall also be unlawful.

(d) Fees. -- An application for an ABC permit shall be accompanied by payment of the following application fee:

- (1) On-premises malt beverage permit -- ~~\$200.00.~~ \$400.00.
- (2) Off-premises malt beverage permit -- ~~\$200.00.~~ \$400.00.
- (3) On-premises unfortified wine permit -- ~~\$200.00.~~ \$400.00.
- (4) Off-premises unfortified wine permit -- ~~\$200.00.~~ \$400.00.

- (5) On-premises fortified wine permit -- ~~\$200.00, \$400.00.~~
- (6) Off-premises fortified wine permit -- ~~\$200.00, \$400.00.~~
- (7) Brown-bagging permit -- ~~\$200.00, \$400.00,~~ unless the application is for a restaurant seating less than 50, in which case the fee shall be ~~\$100.00, \$200.00.~~
- (8) Special occasion permit -- ~~\$200.00, \$400.00.~~
- (9) Limited special occasion permit -- ~~\$25.00, \$50.00.~~
- (10) Mixed beverages permit -- ~~\$750.00, \$1,000.~~
- (11) Culinary permit -- ~~\$100.00, \$200.00.~~
- (12) Unfortified winery permit -- ~~\$150.00, \$300.00.~~
- (13) Fortified winery permit -- ~~\$150.00, \$300.00.~~
- (14) Limited winery permit -- ~~\$150.00, \$300.00.~~
- (15) Brewery permit -- ~~\$150.00, \$300.00.~~
- (16) Distillery permit -- ~~\$150.00, \$300.00.~~
- (17) Fuel alcohol permit -- ~~\$50.00, \$100.00.~~
- (18) Wine importer permit -- ~~\$150.00, \$300.00.~~
- (19) Wine wholesaler permit -- ~~\$150.00, \$300.00.~~
- (20) Malt beverage importer permit -- ~~\$150.00, \$300.00.~~
- (21) Malt beverage wholesaler permit -- ~~\$150.00, \$300.00.~~
- (22) Bottler permit -- ~~\$150.00, \$300.00.~~
- (23) Salesman permit -- ~~\$25.00, \$100.00.~~
- (24) Vendor representative permit -- ~~\$25.00, \$50.00.~~
- (25) Nonresident malt beverage vendor permit -- ~~\$50.00, \$100.00.~~
- (26) Nonresident wine vendor permit -- ~~\$50.00, \$100.00.~~
- (27) Any special one-time permit under G.S. 18B-1002 -- ~~\$25.00, \$50.00.~~
- (28) Winery special event permit -- ~~\$100.00, \$200.00.~~
- (29) Mixed beverages catering permit -- ~~\$100.00, \$200.00.~~
- (30) Guest room cabinet permit -- ~~\$750.00, \$1,000.~~
- (31) Liquor importer/bottler permit -- ~~\$250.00, \$500.00.~~
- (32) Cider and vinegar manufacturer permit -- ~~\$100.00, \$200.00.~~
- (33) Brew on premises permit -- ~~\$200.00, \$400.00.~~

~~(e) Fee for Combined Applications. -- If application is made at the same time for retail malt beverage, unfortified wine and fortified wine permits for a single business location, the total fee for those applications shall be two hundred dollars (\$200.00). If application is made at the same time for brown-bagging and special occasion permits for a single business location, the total fee for those applications shall be three hundred dollars (\$300.00). If application is made at the same time for wine and malt beverage importer permits, the total fee for those applications shall be one hundred fifty dollars (\$150.00). If application is made at the same time for wine and malt beverage wholesaler permits, the total fee for those applications shall be one hundred fifty dollars (\$150.00). If application is made at the same time for nonresident malt beverage vendor and nonresident wine vendor permits, the total fee for those applications shall be fifty dollars (\$50.00).~~

(f) Fee Not Refundable. -- The fee required by subsection (d) shall not be refunded.

(g) Fees to Treasurer. -- All fees collected by the Commission under this or any other section of this Chapter shall be remitted to the State Treasurer for the General Fund."

Section 30. G.S. 18B-903(b) reads as rewritten:

"(b) Renewal. -- Application for renewal of an ABC permit shall be on a form provided by the Commission. An application for renewal shall be accompanied by an application fee of twenty-five percent (25%) of the original application fee set in G.S. 18B-902, except that the renewal application fee for each mixed beverages permit and each guest room cabinet permit shall be ~~five~~ seven hundred fifty dollars ~~(\$500.00)~~ (\$750.00). A renewal fee shall not be refundable."

Section 31. Sections 1 through 5, 6 through 13, 27, and 28 of this act become effective July 1, 1999. Section 5.1 of this act becomes effective October 1, 1998. The remaining sections of this act become effective May 1, 1999.

In the General Assembly read three times and ratified this the 5th day of August, 1998.

Became law upon approval of the Governor at 8:50 a.m. on the 14th day of August, 1998.

S.B. 1001

SESSION LAW 1998-96

AN ACT TO PROVIDE AN AMUSEMENTS TAX EXEMPTION FOR CERTAIN NONPROFIT ARTS ORGANIZATIONS AND COMMUNITY FESTIVALS.

The General Assembly of North Carolina enacts:

Section 1. Article 2 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"§ 105-37.2. Amusements exempt from tax.

The license and gross receipts taxes imposed by G.S. 105-37.1 do not apply to arts festivals held by a person that is exempt from income tax under Article 4 of this Chapter and that meets the following conditions:

- (1) The person holds no more than two arts festivals during a calendar year.
- (2) Each of the person's arts festivals lasts no more than seven days.
- (3) The arts festivals are held outdoors on public property and involve a variety of exhibitions, entertainments, and activities.

The license and gross receipts taxes imposed by G.S. 105-37.1 do not apply to community festivals held by a person that is exempt from income tax under Article 4 of this Chapter and that meets all of the following conditions:

- (1) The person holds no more than one community festival during a calendar year.
- (2) The community festival lasts no more than seven days.
- (3) The community festival involves a variety of exhibitions, entertainments, and activities, the majority of which are held outdoors and are open to the public."

Section 2. G.S. 105-40, as amended by Senate Bill 1252, 1997 General Assembly, An Act To Simplify And Modify Privilege License And Excise Taxes And Related Permit Fees, is further amended by adding two new subdivisions to read:

- "(10) Arts festivals held by a person that is exempt from income tax under Article 4 of this Chapter and that meets the following conditions:
- a. The person holds no more than two arts festivals during a calendar year.
 - b. Each of the person's arts festivals last no more than seven days.
 - c. The arts festivals are held outdoors on public property and involve a variety of exhibitions, entertainments, and activities.
- (11) Community festivals held by a person who is exempt from income tax under Article 4 of this Chapter and that meets all of the following conditions:
- a. The person holds no more than one community festival during a calendar year.
 - b. The community festival lasts no more than seven days.
 - c. The community festival involves a variety of exhibitions, entertainments, and activities, the majority of which are held outdoors and are open to the public."

Section 3. Section 1 of this act is effective when it becomes law. Section 1 of this act is repealed effective July 1, 1999, only if Senate Bill 1252, An Act To Simplify And Modify Privilege And Excise Taxes And Related Permit Fees, is enacted by the 1997 General Assembly. Section 2 of this act becomes effective July 1, 1999, if Senate Bill 1252, An Act To Simplify And Modify Privilege License And Excise Taxes And Related Permit Fees, is enacted by the 1997 General Assembly.

In the General Assembly read three times and ratified this the 5th day of August, 1998.

Became law upon approval of the Governor at 8:52 a.m. on the 14th day of August, 1998.

S.B. 1149

SESSION LAW 1998-97

AN ACT TO REPEAL THE REQUIREMENT PERTAINING TO THE REIMBURSEMENT RATE FOR THE RESPITE CARE PROGRAM.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143B-181.10(c) reads as rewritten:

"(c) Respite care services provided by the programs established by this section may include:

- (1) Counseling and training in the caregiving role, including coping mechanisms and behavior modification techniques;
- (2) Counseling and accessing available local, regional, and State services;
- (3) Support group development and facilitation;

- (4) Assessment and care planning for the patient of the caregiver;
- (5) Attendance and companion services for the patient in order to provide release time to the caregiver;
- (6) Personal care services, including meal preparation, for the patient of the caregiver;
- (7) Temporarily placing the person out of his home to provide the caregiver total respite when the mental or physical stress on the caregiver necessitates this type of respite.

~~Program funds may provide no more than the current adult care reimbursement rate for out of home placement.~~ An out of home placement is defined as placement in a hospital, skilled or intermediate nursing facility, adult care home, adult day health center, or adult day care center. Duration of the service period may extend beyond a year."

Section 2. The Division of Aging of the Department of Health and Human Services shall report to the North Carolina Study Commission on Aging no later than October 1, 1999, the impact on Respite Care Program services and funds of the repeal of the statutory limitation on the reimbursement rate for out-of-home placement which limits reimbursement to the current adult care reimbursement rate.

Section 3. This act is effective when it becomes law and expires July 1, 2000.

In the General Assembly read three times and ratified this the 4th day of August, 1998.

Became law upon approval of the Governor at 8:55 a.m. on the 14th day of August, 1998.

S.B. 1226

SESSION LAW 1998-98

AN ACT TO MAKE TECHNICAL AND CONFORMING CHANGES TO THE REVENUE LAWS AND RELATED STATUTES.

The General Assembly of North Carolina enacts:

PART I. GENERAL TECHNICAL CHANGES.

Section 1(a). Article 8D of Chapter 105 of the General Statutes is repealed.

Section 1(b). G.S. 105-130.11(a)(2) reads as rewritten:

"(2) ~~Building and loan associations and savings and loan associations subject to tax under Article 8D of this Chapter; cooperative~~ Cooperative banks without capital stock organized and operated for mutual purposes and without profit; and electric and telephone membership corporations organized under Chapter 117 of the General Statutes."

Section 1(c). G.S. 105-130.5(c) is amended by adding a new subdivision to read:

"(5) A savings and loan association may deduct interest earned on deposits at the Federal Home Loan Bank of Atlanta, or its successor, to the extent included in federal taxable income."

Section 1(d). G.S. 105-228.24A is recodified as G.S. 105-130.43.

Section 1(e). G.S. 105-130.43, as recodified by this section, reads as rewritten:

"§ 105-130.43. ~~Income tax credit for~~ Credit for savings and loan supervisory fees.

Every savings and loan association is allowed a credit against the ~~income tax imposed on it under Article 4 of this Chapter~~ tax imposed by this Part for a taxable year equal to the amount of supervisory fees, paid by the association during the taxable year, that were assessed by the Administrator of the Savings Institutions Division of the Department of Commerce for the State fiscal year beginning ~~on or~~ during that taxable year. This credit may not exceed the amount of ~~income tax payable by the association imposed by this Part~~ for the taxable year for which the credit is claimed, year, reduced by the sum of all ~~income tax~~ credits allowed against the tax, except tax payments made by or on behalf of the association. ~~The supervisory fees shall not be an allowable deduction in determining taxable income for any association claiming the credit allowed under this section, taxpayer. A taxpayer that claims the credit allowed under this section may not deduct the supervisory fees in determining taxable income."~~

Section 1(f). G.S. 105-83(d) reads as rewritten:

"(d) This section does not apply to corporations liable for the tax levied under G.S. ~~105-102.3, 105-102.3~~ or to savings and loan associations."

Section 1(g). G.S. 105-88(b) reads as rewritten:

"(b) ~~Nothing in this section shall be construed to~~ This section does not apply to banks, industrial banks, trust companies, building savings and loan associations, ~~or~~ cooperative credit unions, ~~nor shall it apply to~~ the business of negotiating loans on real estate as described in G.S. 105-41, ~~nor to~~ pawnbrokers lending or advancing money on specific articles of personal property, ~~nor to or~~ insurance premium finance companies licensed under Article 35 of Chapter 58 of the General Statutes. ~~It shall apply~~ This section applies to those persons or concerns operating what are commonly known as loan companies or finance companies and whose business is as hereinbefore described, and those persons, firms, or corporations pursuing the business of lending money and taking as security for the payment of ~~such the~~ loan and interest an assignment of wages or an assignment of wages with power of attorney to collect ~~same,~~ the amount due, or other order or chattel mortgage or bill of sale upon household or kitchen furniture. No real estate mortgage broker ~~shall be~~ is required to obtain a privilege license under this section merely because ~~he advances his~~ the broker advances the broker's own funds and takes a security interest in real estate to secure ~~such the~~ advances and when, at the time of ~~such advance of his own funds,~~ he the advance, the broker has already made arrangements with others for the sale or discount of the obligation at a later date and does so sell or discount ~~such the~~ obligation within the period specified in ~~said the~~ said the arrangement or extensions thereof; or when, at the time of the advance ~~of his own funds,~~ he the broker intends to sell the obligation to others at a later date and does, within 12 months from date of initial advance, make arrangements with others for the sale of ~~said the~~ said the obligation and does sell the obligation within the period specified in ~~said the~~ said the arrangement or extensions thereof; or because ~~he advances his~~ the broker advances the broker's own funds in

temporary financing directly involved in the production of permanent-type loans for sale to others; and no real estate mortgage broker whose mortgage lending operations are essentially as described above ~~shall be~~ is required to obtain a privilege license under this section."

Section 1(h). G.S. 105-102.3 reads as rewritten:

"§ 105-102.3. *Banks.*

There is hereby imposed upon every bank or banking association, including each national banking association, that is operating in this State as a commercial bank, an industrial bank, a savings bank created other than under Chapter 54B or 54C of the General Statutes or the Home Owners' Loan Act of 1933 (12 U.S.C. §§ 1461-68), a trust company, or any combination of such facilities or services, and whether such bank or banking association, hereinafter to be referred to as a bank or banks, be organized, under the laws of the United States or the laws of North Carolina, in the corporate form or in some other form of business organization, an annual privilege tax in the amount of thirty dollars (\$30.00) for each one million dollars (\$1,000,000) or fractional part thereof of total assets held as hereinafter provided. The assets upon which the tax is levied shall be determined by averaging the total assets shown in the four quarterly call reports of condition (consolidating domestic subsidiaries) for the preceding calendar year as required by bank regulatory authorities; provided, however, where a new bank commences operations within the State there shall be levied and paid an annual privilege tax of one hundred dollars (\$100.00) until such bank shall have made four quarterly call reports of condition (consolidating domestic subsidiaries) for a single calendar year; provided further, however, where a bank operates an international banking facility, as defined in G.S. 105-130.5(b)(13), the assets upon which the tax is levied shall be reduced by the average amount for the taxable year of all assets of the international banking facility which are employed outside the United States, as computed pursuant to G.S. 105-130.5(b)(13)c. For an out-of-state bank with one or more branches in this State, or for an in-state bank with one or more branches outside this State, the assets of the out-of-state bank or of the in-state bank upon which the tax is levied shall be reduced by the average amount for the taxable year of all assets of the out-of-state bank or of the in-state bank which are employed outside this State. The tax imposed hereunder shall be for the privilege of carrying on the businesses herein defined on a statewide basis regardless of the number of places or locations of business within the State. Counties, cities and towns shall not levy a license or privilege tax on the businesses taxed under this section, nor on the business of an international banking facility as defined in subsection (b)(13) of G.S. 105-130.5."

Section 1(i). This section repeals any law that would otherwise exempt savings and loan associations, as defined in G.S. 54B-4, from the franchise tax imposed in Article 3 of Chapter 105 of the General Statutes.

Section 1(j). This section becomes effective for taxable years beginning on or after January 1, 1999.

Section 2. G.S. 105-17 is repealed.

Section 3. G.S. 105-25 is repealed.

Section 4. G.S. 105-130.5(a)(10) reads as rewritten:

- "(10) The total amounts allowed under this ~~Article Chapter~~ during the taxable year as a credit against the taxpayer's income tax. A corporation that apportions part of its income to this State shall make the addition required by this subdivision after it determines the amount of its income that is apportioned and allocated to this State and shall not apply to a credit taken under this ~~Article Chapter~~ the apportionment factor used by it in determining the amount of its apportioned income."

Section 5. G.S. 105-131.1(b) reads as rewritten:

"(b) Each shareholder's pro rata share of an S Corporation's income attributable to the State and each resident shareholder's pro rata share of income not attributable to the State, shall be taken into account by the shareholder in the manner and subject to the adjustments provided in ~~Division II~~ Parts 2 and 3 of this Article and section 1366 of the Code and shall be subject to the tax levied under ~~Division II~~ Parts 2 and 3 of this Article."

Section 6. G.S. 105-131.6 reads as rewritten:

"§ 105-131.6. *Distributions.*

(a) Subject to the provisions of subsection (c) of this section, a distribution made by an S Corporation with respect to its stock to a resident shareholder ~~shall be~~ is taxable to the shareholder as provided in ~~Division II~~ Parts 2 and 3 of this Article to the extent that the distribution is characterized as a dividend or as gain from the sale or exchange of property pursuant to section 1368 of the Code.

(b) Subject to the provisions of subsection (c) of this section, any distribution of money made by a corporation with respect to its stock to a resident shareholder during a post-termination transition period ~~shall not be~~ is not taxable to the shareholder as provided in ~~Division II~~ Parts 2 and 3 of this Article to the extent the distribution is applied against and reduces the adjusted basis of the stock of the shareholder in accordance with section 1371(e) of the Code.

(c) In applying sections 1368 and 1371(e) of the Code to any distribution referred to in this section:

- (1) The term "adjusted basis of the stock" means the adjusted basis of the shareholder's stock as determined under G.S. ~~105-131.3; and 105-131.3.~~
- (2) The accumulated adjustments account maintained for each resident shareholder ~~shall must~~ be equal to, and ~~shall be~~ adjusted in the same manner as, the corporation's accumulated adjustments account defined in section 1368(e)(1)(A) of the Code, except that:
 - a. The accumulated adjustments account shall be modified in the manner provided in G.S. ~~105-131.3(b)(1); and 105-131.3(b)(1).~~
 - b. The amount of the ~~Corporation's~~ corporation's federal accumulated adjustments account that existed on the day this State began to measure the S Corporation shareholders' income by reference to the income of the S Corporation ~~shall be~~ is ignored and ~~shall be~~ is treated for purposes of ~~Divisions I and~~

~~II~~ of this Article as additional accumulated earnings and profits of the corporation."

Section 7. G.S. 105-131.7(e) reads as rewritten:

"(e) Amounts paid to the Department on account of the corporation's shareholders under subsections (b) and (c) ~~shall~~ constitute payments on their behalf of the income tax imposed on them under ~~Division II~~ Parts 2 and 3 of this Article for the taxable period."

Section 8. G.S. 105-131.8 reads as rewritten:

"§ 105-131.8. *Tax credits.*

(a) For purposes of G.S. ~~105-151~~, 105-151 and G.S. 105-160.4, each resident shareholder ~~shall be~~ is considered to have paid a tax imposed on the shareholder in an amount equal to the shareholder's pro rata share of any net income tax paid by the S Corporation to a state ~~which~~ that does not measure the income of S Corporation shareholders by the income of the S Corporation. For purposes of the preceding sentence, the term "net income tax" means any tax imposed on or measured by a corporation's net income.

(b) ~~Each~~ Except as otherwise provided in G.S. 105-160.3, each shareholder of an S Corporation is allowed as a credit against the tax imposed by ~~Division II~~ Parts 2 and 3 of this Article an amount equal to the shareholder's pro rata share of the tax credits for which the S Corporation is eligible."

Section 9. G.S. 105-134.1(7b) is repealed.

Section 10. G.S. 105-160.3(b) reads as rewritten:

"(b) The following credits are not allowed to an estate or trust:

- (1) G.S. 105-151. Tax credits for income taxes paid to other states by individuals.
- (2) G.S. 105-151.11. Credit for child care and certain employment-related expenses.
- (3) G.S. 105-151.18. Credit for the disabled.
- (4) G.S. 105-151.24. Credit for children.
- (5) G.S. 105-151.26. Credit for charitable contributions by nonitemizers."

Section 11. G.S. 105-163.3(a) reads as rewritten:

"(a) Requirement. -- Every payer who pays a contractor more than six hundred dollars (\$600.00) during a calendar year shall deduct and withhold from compensation paid to ~~a~~ the contractor the State income taxes payable by the contractor on the compensation as provided in this section. The amount of taxes to be withheld is four percent (4%) of the compensation paid to the contractor. The taxes a payer withholds are held in trust for the Secretary."

Section 12. G.S. 105-163.3(b) reads as rewritten:

"(b) Exemptions. -- The withholding requirement does not apply to the following:

- (1) Compensation that is subject to the withholding requirement of G.S. 105-163.2.
- (2) Compensation paid to an ordained or licensed member of the clergy.
- (3) Compensation paid to an entity exempt from tax under G.S. 105-130.11."

Section 13. G.S. 105-163.3(e) reads as rewritten:

"(e) Records. -- If a payer does not withhold from payments to a nonresident entity because the entity is exempt from tax under G.S. 105-130.11, the payer shall obtain from the entity documentation proving its exemption from tax. If a payer does not withhold from payments to a nonresident corporation or a nonresident limited liability company because the entity has obtained a certificate of authority from the Secretary of State, the payer shall obtain from the entity its corporate identification number issued by the Secretary of State. If a payer does not withhold from payments to an individual because the individual is a resident, the payer shall obtain the individual's address and social security number. If a payer does not withhold from a partnership because the partnership has a permanent place of business in this State, the payer shall obtain the partnership's address and taxpayer identification number. The payer shall retain this information with its records."

Section 13.1(a). G.S. 105-164.3(16)f. reads as rewritten:

"f. The sales price of tangible personal property sold through a coin-operated vending machine, other than closed-container soft drinks ~~subject to excise tax under Article 2B of this Chapter~~ or tobacco products, is considered to be fifty percent (50%) of the total amount for which the property is sold in the vending machine."

Section 13.1(b). G.S. 105-259(b)(15) reads as rewritten:

"(15) To exchange information concerning a tax imposed by Articles 2A, ~~2B~~, 2C, or 2D of this Chapter with one of the following agencies when the information is needed to fulfill a duty imposed on the agency:

- a. The North Carolina Alcoholic Beverage Control Commission.
- b. The Division of Alcohol Law Enforcement of the Department of Crime Control and Public Safety.
- c. The Bureau of Alcohol, Tobacco, and Firearms of the United States Treasury Department."

Section 13.1(c). G.S. 105-267 reads as rewritten:

"§ 105-267. Taxes to be paid; suits for recovery of taxes.

No court of this State shall entertain a suit of any kind brought for the purpose of preventing the collection of any tax imposed in this Subchapter. Whenever a person has a valid defense to the enforcement of the collection of a tax, the person shall pay the tax to the proper officer, and that payment shall be without prejudice to any defense of rights the person may have regarding the tax. At any time within the applicable protest period, the taxpayer may demand a refund of the tax paid in writing from the Secretary and if the tax is not refunded within 90 days thereafter, may sue the Secretary in the courts of the State for the amount demanded. The protest period for a tax levied in Article 2A, ~~2B~~, 2C, or 2D of this Chapter is 30 days after payment. The protest period for all other taxes is one year after payment.

The suit may be brought in the Superior Court of Wake County, or in the county in which the taxpayer resides at any time within three years after the expiration of the 90-day period allowed for making the refund. If upon the

trial it is determined that all or part of the tax was levied or assessed for an illegal or unauthorized purpose, or was for any reason invalid or excessive, judgment shall be rendered therefor, with interest, and the judgment shall be collected as in other cases. The amount of taxes for which judgment is rendered in such an action shall be refunded by the State. G.S. 105-241.2 provides an alternate procedure for a taxpayer to contest a tax and is not in conflict with or superseded by this section."

Section 13.1(d). This section becomes effective July 1, 1999.

Section 13.2. G.S. 105-164.4(a)(5) reads as rewritten:

"(5) The rate of two percent (2%) applies to the sales price of food that is not otherwise exempt pursuant to G.S. 105-164.13 but would be exempt pursuant to G.S. 105-164.13 if it were purchased ~~with coupons issued~~ under the Food Stamp Program, 7 U.S.C. § 51."

Section 14. G.S. 105-164.13(11) reads as rewritten:

"(11) Any of the following fuel:

- a. Motor fuel, as defined in G.S. 105-449.60, except motor fuel for which a refund of the per gallon excise tax is allowed under ~~G.S. 105-449.105(c) or (d) or under~~ G.S. 105-449.107.
- b. Alternative fuel taxed under Article 36D of this Chapter, unless a refund of that tax is allowed under G.S. 105-449.107."

Section 14.1. G.S. 105-164.13(38) reads as rewritten:

"(38) Food and other items lawfully purchased ~~with coupons issued~~ under the Food Stamp Program, 7 U.S.C. § 51, and supplemental foods lawfully purchased with a food instrument issued under the Special Supplemental Food Program, 42 U.S.C. § 1786, and supplemental foods purchased for direct distribution by the Special Supplemental Food Program."

Section 15. G.S. 105-164.14(a) reads as rewritten:

"(a) Interstate Carriers. -- An interstate carrier is allowed a refund, in accordance with this section, of part of the sales and use taxes paid by it on lubricants, repair parts, and accessories purchased in this State for a motor vehicle, railroad car, locomotive, or airplane the carrier operates. An "interstate carrier" is a person who is engaged in transporting persons or property in interstate commerce for compensation, ~~is subject to regulation by, and to the jurisdiction of, the Interstate Commerce Commission or the United States Department of Transportation, and is required by either federal agency to keep records according to generally accepted accounting principles (GAAP) or, in the case of a small certificated air carrier, to make reports of financial and operating statistics.~~ compensation. The Secretary shall prescribe the periods of time, whether monthly, quarterly, semiannually, or otherwise, with respect to which refunds may be claimed, and shall prescribe the time within which, following these periods, an application for refund may be made.

An applicant for refund shall furnish the following information and any proof of the information required by the Secretary:

- (1) A list identifying the lubricants, repair parts, and accessories purchased by the applicant inside or outside this State during the refund period.
- (2) The purchase price of the items listed in subdivision (1) of this subsection.
- (3) The sales and use taxes paid in this State on the listed items.
- (4) The number of miles the applicant's motor vehicles, railroad cars, locomotives, and airplanes were operated both inside and outside this State during the refund period.
- (5) Any other information required by the Secretary.

For each applicant, the Secretary shall compute the amount to be refunded as follows. First, the Secretary shall determine the ratio of the number of miles the applicant operated its motor vehicles, railroad cars, locomotives, and airplanes in this State during the refund period to the number of miles it operated them both inside and outside this State during the refund period. Second, the Secretary shall determine the applicant's proportional liability for the refund period by multiplying this mileage ratio by the purchase price of the items identified in subdivision (1) of this subsection and then multiplying the resulting product by the tax rate that would have applied to the items if they had all been purchased in this State. Third, the Secretary shall refund to each applicant the excess of the amount of sales and use taxes the applicant paid in this State during the refund period on these items over the applicant's proportional liability for the refund period."

Section 15.1. G.S. 105-187.6(a) reads as rewritten:

"(a) Full Exemptions. -- The tax imposed by this Article does not apply when a certificate of title is issued as the result of a transfer of a motor vehicle:

- (1) To the insurer of the motor vehicle under G.S. 20-109.1 because the vehicle is a salvage vehicle.
- (2) To either a manufacturer, as defined in G.S. 20-286, or a motor vehicle retailer for the purpose of resale.
- (3) To the same owner to reflect a change or correction in the owner's name.
- (4) By will or intestacy.
- (5) By a gift between a husband and wife, a parent and child, or a stepparent and a stepchild.
- (6) ~~By a distribution of marital property as a result of a divorce.~~ By a distribution of marital or divisible property incident to a marital separation or divorce.
- (7) To a handicapped person from the Department of Health and Human Services after the vehicle has been equipped by the Department for use by the handicapped.
- (8) To a local board of education for use in the driver education program of a public school when the motor vehicle is transferred:
 - a. By a retailer and is to be transferred back to the retailer within 300 days after the transfer to the local board.
 - b. By a local board of education."

Section 16. G.S. 105-197 reads as rewritten:

"§ 105-197. *When return required; due date of tax and return.*

(a) When Return Required. -- Anyone who, during the calendar year, gives to a donee a gift of a future interest or one or more ~~gifts~~ taxable gifts whose total value exceeds the amount of the annual exclusion set in G.S. 105-188(d) must file a gift tax return, under oath or affirmation, with the Secretary on a form prescribed by the Secretary. For the purpose of this section, a taxable gift is a gift that is not exempt under G.S. 105-188(h) or (i).

(b) Due Date. -- The tax is due on April 15th following the end of the calendar year. A return must be filed on or before the due date of the tax. A taxpayer may ask the Secretary of Revenue for an extension of time for filing a return under G.S. 105-263."

Section 17. G.S. 105-228.5(d) reads as rewritten:

"(d) Tax Rates; Disposition. --

- (1) Workers Compensation. -- The tax rate to be applied to gross premiums, or the equivalent thereof in the case of self-insurers, ~~collected~~ on contracts applicable to liabilities under the Workers' Compensation Act shall be two and five-tenths percent (2.5%). The net proceeds shall be credited to the General Fund.
- (2) Other Insurance Contracts. -- The tax rate to be applied to gross premiums ~~collected~~ on all other insurance contracts issued by insurers shall be one and nine-tenths percent (1.9%). The net proceeds shall be credited to the General Fund.
- (3) Additional Statewide Fire and Lightning Rate. -- An additional tax shall be applied to ~~amounts collected~~ gross premiums on contracts of insurance applicable to fire and lightning coverage, except in the case of marine and automobile policies, at the rate of one and thirty-three hundredths percent (1.33%). Twenty-five percent (25%) of the net proceeds of this additional tax shall be deposited in the Volunteer Fire Department Fund established in Article 87 of Chapter 58 of the General Statutes. The remaining net proceeds shall be credited to the General Fund.
- (4) Additional Local Fire and Lightning Rate. -- An additional tax shall be applied to ~~amounts collected~~ gross premiums on contracts of insurance applicable to fire and lightning coverage within fire districts at the rate of one-half of one percent (1/2 of 1%). The net proceeds shall be credited to the Department of Insurance for disbursement pursuant to G.S. 58-84-25.
- (5) Article 65 Corporations. -- The tax rate to be applied to gross premiums and/or gross collections from membership dues, exclusive of receipts from cost plus plans, received by Article 65 corporations shall be one-half of one percent (1/2 of 1%). The net proceeds shall be credited to the General Fund."

Section 18. G.S. 105-228.10 reads as rewritten:

"§ 105-228.10. No additional local taxes.

No county, city, or town shall be allowed to impose any additional tax, license, or fee, other than ad valorem taxes, upon any insurance company or association paying the fees and taxes. No city or county may levy on a person subject to the tax levied in this Article. Article a privilege tax or a tax computed on the basis of gross premiums."

Section 19. G.S. 105-249.3 is repealed.

Section 20. G.S. 105-259(b)(3) reads as rewritten:

"(b) Disclosure Prohibited. -- An officer, an employee, or an agent of the State who has access to tax information in the course of service to or employment by the State may not disclose the information to any other person unless the disclosure is made for one of the following purposes:

- (3) Review by a tax official of another ~~state or the Internal Revenue Commissioner of the United States~~ jurisdiction to aid the ~~state or the Commissioner~~ jurisdiction in collecting a tax imposed by this State, ~~the other state, or the United States~~ State or the other jurisdiction if the laws of the other ~~state or the United States~~ allow the state or the United States jurisdiction allow it to provide similar tax information to a representative of this State."

Section 21. G.S. 105-264 reads as rewritten:

" 105-264. *Effect of Secretary's interpretation of revenue laws.*

It ~~shall be~~ is the duty of the Secretary to interpret all laws administered by the Secretary. The Secretary's interpretation of these laws shall be consistent with the applicable rules.

An interpretation by the Secretary is prima facie correct. When the Secretary interprets a law by adopting a rule or publishing a bulletin or directive on the law, the interpretation is a protection to the officers and taxpayers affected by the interpretation, and taxpayers are entitled to rely upon the interpretation. If the Secretary changes ~~a rule or a bulletin, an interpretation,~~ a taxpayer who relied ~~upon the rule or bulletin~~ on it before it was changed is not liable for any penalty or additional assessment on any tax that accrued before the ~~rule or bulletin~~ interpretation was changed and was not paid by reason of reliance upon the ~~rule or bulletin, interpretation.~~ If a taxpayer requests in writing specific advice from the Department and receives in response erroneous written advice, the taxpayer is not liable for any penalty or additional assessment attributable to the erroneous advice furnished by the Department to the extent the advice was reasonably relied upon by the taxpayer and the penalty or additional assessment did not result from the taxpayer's failure to provide adequate or accurate information.

This section does not prevent the Secretary from changing an interpretation and it does not prevent a change in an interpretation from applying on and after the effective date of the change."

Section 22. G.S. 105-277.3 reads as rewritten:

" 105-277.3. *Agricultural, horticultural, and forestland -- Classifications.*

(a) Classes Defined. -- The following classes of property are ~~hereby~~ designated special classes of property under authority of Article V, Sec. 2(2) Section 2(2) of Article V of the North Carolina Constitution and shall be appraised, ~~assessed and taxed as hereinafter provided;~~ assessed, and taxed as provided in G.S. 105-277.2 through G.S. 105-277.7.

- (1) Agricultural land. -- Individually owned agricultural land consisting of one or more tracts, one of which consists of at least 10 acres that are in actual production and that, for the three years preceding January 1 of the year for which the benefit of this section is claimed, have produced an average gross income of at least one thousand dollars (\$1,000). Gross income includes

income from the sale of the agricultural products produced from the land and any payments received under a governmental soil conservation or land retirement program. Land in actual production includes land under improvements used in the commercial production or growing of crops, plants, or animals.

- (2) Horticultural land. -- Individually owned horticultural land consisting of one or more tracts, one of which consists of at least five acres that are in actual production and that, for the three years preceding January 1 of the year for which the benefit of this section is claimed, have ~~either~~ met the applicable minimum gross income requirement. Land in actual production includes land under improvements used in the commercial production or growing of fruits or vegetables or nursery or floral products. Land that has been
 - a. ~~Been~~ used to produce evergreens intended for use as Christmas trees and must have met the qualifying or minimum gross income requirements established by the Department of Revenue for the land; or
 - b. ~~Produced~~ land. All other horticultural land must have produced an average gross income of at least one thousand dollars (\$1,000). Gross income includes income from the sale of the horticultural products produced from the land and any payments received under a governmental soil conservation or land retirement program. ~~Land in actual production includes land under improvements used in the commercial production or growing of fruits or vegetables or nursery or floral products.~~
 - (3) Forestland. -- Individually owned forestland consisting of one or more tracts, one of which consists of at least 20 acres that are in actual production and are not included in a farm unit.
- (b) Natural Person Ownership Requirements. -- In order to come within a classification described in subdivision (a)(1), (2) or (3), above, the property must, subsection (a) of this section, the land must, if owned by natural persons, a natural person, also satisfy one of the following conditions:
- (1) It is the owner's place of residence.
 - (2) It has been owned by the current owner or a relative of the current owner for the four years preceding January 1 of the year for which the benefit of this section is claimed.
 - (3) At the time of transfer to the current owner, it qualified for classification in the hands of a business entity or trust ~~which that~~ transferred the property land to the current owner who was a member of the business entity or a beneficiary of the trust, as appropriate.
- (b1) Entity Ownership Requirements. -- If In order to come within a classification described in subsection (a) of this section, the land must, if owned by a business entity or trust, the property must have been owned by the business entity or trust or by one or more of its members, or by one or more of its creators in the case of a trust, members or creators, respectively, for the four years immediately preceding January 1 of the year for which the

benefit of this section is claimed. ~~Notwithstanding the provisions of G.S. 105-277.2(4)b, a business entity qualifying for a classification described in G.S. 105-277.3 shall not lose the benefit of the classification by reason of the death of one of its members if the decedent's ownership passes to and remains in a relative of the decedent.~~

(b2) Exception to Ownership Requirements. -- Property loses its eligibility for the classifications described in subsection (a) of this section if ownership of the property passes to anyone other than a relative of the owner or passes to or from a business entity or trust from or to anyone other than its members or its creators or beneficiaries, respectively, except that property does not lose its eligibility if both of the following conditions are met: (i) it G.S. 105-277.4(c) provides that deferred taxes are payable if land fails to meet any condition or requirement for classification. Accordingly, if land fails to meet an ownership requirement due to a change of ownership, G.S. 105-277.4(c) applies. Despite this failure and the resulting liability for taxes under G.S. 105-277.4(c), the land may qualify for classification in the hands of the new owner if both of the following conditions are met, even if the new owner does not meet all of the ownership requirements of subsections (b) and (b1) of this section with respect to the land:

- (1) The land was appraised at its present use value or was eligible for appraisal at its present use value pursuant to that subsection at the time title to the property land passed to the present owner, and (ii) at new owner.
- (2) At the time title to the property land passed to the present new owner, the owner owned other property land classified under subsection (a).

~~The fact that property may retain its eligibility because the preceding two conditions were met does not affect any liability for deferred taxes under G.S. 105-277.4(c) if those taxes were otherwise due at the time title passed to the present owner.~~

(c) Repealed by Session Laws 1995, c. 454, s. 2.

(d) Exception for Conservation Reserve Program. -- Enrollment Land enrolled in the federal Conservation Reserve Program authorized by Title XII of the Food Security Act of 1985 (Pub. L. 99-198), as amended, shall not preclude eligibility of land for present use value treatment solely on the grounds that the land is no longer 16 U.S.C. § 1381 is considered to be in actual production, and income derived from participation in the federal Conservation Reserve Program may be used in meeting the minimum gross income requirements of this section either separately or in combination with income from actual production. Land enrolled in the federal Conservation Reserve Program shall be assessed as agricultural land if it is planted in vegetation other than trees, or as forest land forestland if it is planted in trees.

(e) Exception for Turkey Disease. -- Notwithstanding the provisions of subsection (a) of this section, agricultural Agricultural land that meets all of the following conditions does not lose its eligibility for present use value treatment solely on the grounds that it is no longer in actual production, it no longer meets the minimum income requirements, or both: is considered

to be in actual production and to meet the minimum gross income requirements:

- (1) The land was in actual production in turkey growing within the preceding two years and qualified for present use value treatment while it was in actual production.
- (2) The land was taken out of actual production in turkey growing solely for health and safety considerations due to the presence of Poulter Enteritis Mortality Syndrome among turkeys in the same county or a neighboring county.
- (3) The land is otherwise eligible for present use value treatment."

Section 23. G.S. 105-277.4(c) reads as rewritten:

"(c) Deferred Taxes. -- Property Land meeting the conditions for classification under G.S. 105-277.3 shall be taxed on the basis of the value of the property land for its present use. The difference between the taxes due on the present-use basis and the taxes ~~which that~~ would have been payable in the absence of this classification, together with any interest, penalties, or costs that may accrue thereon, ~~shall be~~ are a lien on the real property of the taxpayer as provided in G.S. 105-355(a). The difference in taxes shall be carried forward in the records of the taxing unit or units as deferred taxes, but shall not be payable, ~~unless and until the property loses its eligibility for the benefit of this classification.~~ taxes. The taxes become due and payable when the land fails to meet any condition or requirement for classification. The tax for the fiscal year that opens in the calendar year in which a ~~disqualification occurs shall be~~ deferred taxes become due is computed as if the property land had not been classified for that year, and taxes for the preceding three fiscal years ~~which that~~ have been deferred ~~shall immediately be~~ are immediately payable, together with interest ~~thereon~~ as provided in G.S. 105-360 for unpaid ~~taxes which shall accrue~~ taxes. Interest accrues on the deferred taxes due as if they had been payable on the dates on which they originally became due. If only a part of the qualifying tract of land ~~loses its eligibility,~~ fails to meet a condition or requirement for classification, a determination shall be made of the amount of deferred taxes applicable to that part and that amount ~~shall become~~ becomes payable with interest as provided above. Upon the payment of any taxes deferred in accordance with this section for the three years immediately preceding a disqualification, all liens arising under this subsection ~~shall be~~ are extinguished."

Section 24. G.S. 105-277.2(4)b. reads as rewritten:

"b. A business entity having as its principal business one of the activities described in subdivisions (1), (2), and (3) and whose members ~~are all either a natural person~~ are all natural persons who meet one or more of the following conditions:

1. The member is actively engaged in the business of the entity or a entity.
2. The member is a relative of a member who is actively engaged in the business of the entity.
3. The member is a relative of, and inherited the membership interest from, a decedent who met one or both of the preceding conditions after the land qualified for classification in the hands of the business entity."

Section 25. G.S. 105-333(14) reads as rewritten:

"(14) Public service company. -- A railroad company, a pipeline company, a gas company, an electric power company, an electric membership corporation, a telephone company, a telegraph company, a bus line company, an airline company, or a motor freight carrier company. ~~any other~~ The term also includes any company performing a public service that is regulated by the ~~Interstate Commerce Commission, the Federal Power Commission, United States Department of Energy, the United States Department of Transportation, the Federal Communications Commission, the Federal Aviation Agency, or the North Carolina Utilities Commission,~~ except that the term does not include a water company, a radio common carrier company as defined in G.S. 62-119(3), a cable television company, or a radio or television broadcasting company. ~~The term also includes a motor freight carrier company. For purposes of appraisal under this Article, the term also includes a pipeline company whether or not it performs a public service and whether or not it is regulated by one of the regulatory agencies named in this subdivision."~~

Section 26. G.S. 105-378(c) is repealed.

Section 27. G.S. 105-395(b) is repealed.

Section 28. G.S. 105-449.88(2) reads as rewritten:

"(2) Motor fuel sold to the federal ~~government.~~ government for its use."

Section 29. G.S. 105-449.105(d) is repealed.

Section 30. G.S. 105-449.110(b) reads as rewritten:

"(b) Interest. -- The rate of interest payable on a refund is the rate set in ~~G.S. 105-242.1(i).~~ G.S. 105-241.1(i). Interest accrues on a refund from the date that is 90 days after the later of the following:

- (1) The date the application for refund was filed.
- (2) The date the application for refund was due."

Section 30.1. G.S. 105-467(5) reads as rewritten:

"(5) The sales price of food that is not otherwise exempt from tax pursuant to G.S. 105-164.13 but would be exempt from the State sales and use tax pursuant to G.S. 105-164.13 if it were ~~purchased with coupons~~ issued under the Food Stamp Program, 7 U.S.C. § 51."

Section 31. G.S. 105-487 reads as rewritten:

" 105-487. ~~Use of additional tax revenue by counties and municipalities.~~ counties.

(a) Except as provided in subsection (c), forty percent (40%) of the revenue received by a county from additional one-half percent (1/2%) sales and use taxes levied under this Article during the first five fiscal years in which the additional taxes are in effect in the county and thirty percent (30%) of the revenue received by a county from these taxes in the next 10 fiscal years in which the taxes are in effect in the county may be used by the county only for public school capital outlay purposes or to retire any indebtedness incurred by the county for these purposes.

~~(b) Except as provided in subsection (c), forty percent (40%) of the revenue received by a municipality from additional one-half percent (1/2%) sales and use taxes levied under this Article during the first five fiscal years in which the additional taxes are in effect in the municipality and thirty percent (30%) of the revenue received by a municipality from these taxes in the second five fiscal years in which the taxes are in effect in the municipality may be used by the municipality only for water and sewage capital outlay purposes or to retire any indebtedness incurred by the municipality for these purposes.~~

(c) ~~The Local Government Commission may, upon petition by a county or municipality, authorize a county or municipality~~ county, authorize the county to use part or all its tax revenue, otherwise required by subsection (a) ~~or (b) of this section~~ to be used for public schools ~~or water and sewage school capital needs, for any lawful purpose.~~ The petition shall be in the form of a resolution adopted by the ~~City Council or Board of County Commissioners~~ and transmitted to the Local Government Commission. The petition shall demonstrate that the county ~~or municipality~~ can provide for its public school ~~or water and sewage~~ capital needs without restricting the use of part or all of the designated amount of the additional one-half percent (1/2%) sales and use tax revenue for ~~these purposes,~~ that purpose.

In making its decision, the Local Government Commission shall consider information contained in the petition concerning not only the public school ~~or water and sewage~~ capital needs, but also the other capital needs of the petitioning ~~county or municipality.~~ county. The Commission may also consider information from sources other than the petition. The Commission shall issue a written decision on each petition stating the findings of the Commission concerning the public school ~~or water and sewage~~ capital needs of the petitioning county ~~or municipality~~ and the percentage of revenue otherwise restricted by subsection (a) ~~or (b) of this section~~ that may be used by the petitioning county ~~or municipality~~ for any lawful purpose.

Decisions of the Commission allowing counties ~~or municipalities~~ to use a percentage of their tax revenue that would otherwise be restricted under subsection (a) ~~or (b) of this section~~ for any lawful purpose are final and shall continue in effect until the restrictions imposed by ~~those subsections~~ that subsection expire. A county ~~or municipality~~ whose petition is denied, in whole or in part, by the Commission may subsequently submit a new petition to the Commission.

(d) For purposes of determining the number of fiscal years in which one-half percent (1/2%) sales and use taxes levied under this Article have been in effect in a ~~county or municipality,~~ county, these taxes are considered to be in effect only from the effective date of the levy of these taxes and are considered to be in effect for a full fiscal year during the first year in which these taxes were in effect, regardless of the number of months in that year in which the taxes were actually in effect.

(e) A county ~~or municipality~~ may expend part or all of the revenue restricted for public school ~~or water and sewage~~ capital needs pursuant to ~~subsections (a) and (b)~~ subsection (a) of this section in the fiscal year in which the revenue is received, or the county ~~or municipality~~ may place part

or all of this revenue in a capital reserve fund and shall specifically identify this revenue in accordance with Chapter 159 of the General Statutes."

Section 32. G.S. 105-504 is repealed.

Section 33. G.S. 105-550 reads as rewritten:

" 105-550. *Definitions.*

The definitions in G.S. 105-164.3 and the following definitions apply in this Article:

- (1) Authority. -- A regional public transportation authority or a regional transportation authority created pursuant to Article 26 or Article 27 of Chapter 160A of the General Statutes.
- (2) Long-term lease or rental. -- Defined in G.S. 105-187.1.
- (3) Motorcycle. -- Defined in G.S. 20-4.01.
- (4) ~~Private passenger vehicle. -- Defined in G.S. 20-4.01.~~
- (5) Public transportation system. -- Any combination of real and personal property established for purposes of public transportation. The systems may include one or more of the following: structures, improvements, buildings, equipment, vehicle parking or passenger transfer facilities, railroads and railroad rights-of-way, rights-of-way, bus services, shared-ride services, high-occupancy vehicle facilities, carpool and vanpool programs, voucher programs, telecommunications and information systems, integrated fare systems, bus lanes, and busways. The term does not include, however, streets, roads, or highways except to the extent they are dedicated to public transportation vehicles or to the extent they are necessary for access to vehicle parking or passenger transfer facilities.
- (6) Short-term lease or rental. -- A lease or rental that is not a long-term lease or rental.
- (7) U-drive-it passenger vehicle. -- Defined in G.S. 20-4.01."

Section 34. G.S. 105-551(a) reads as rewritten:

"(a) Tax. -- The board of trustees of an Authority may levy a privilege tax on a retailer who is engaged in the business of leasing or renting private U-drive-it passenger vehicles or motorcycles based on the gross receipts derived by the retailer from the short-term lease or rental of these vehicles. The tax rate must be a percentage and may not exceed five percent (5%). A tax levied under this section applies to short-term leases or rentals made by a retailer whose place of business or inventory is located within the territorial jurisdiction of the Authority. This tax is in addition to all other taxes."

Section 35. G.S. 105-552(b) reads as rewritten:

"(b) Collection. -- A tax levied by an Authority under this Article shall be collected by the Authority but shall otherwise be administered in the same manner as the optional gross receipts tax levied by G.S. 105-187.5. Like the optional gross receipts tax, a tax levied under this Article is to be added to the lease or rental price of a private U-drive-it passenger vehicle or motorcycle and thereby be paid by the person to whom it is leased or rented.

A tax levied under this Article applies regardless of whether the retailer who leases or rents the private U-drive-it passenger vehicle or motorcycle has elected to pay the optional gross receipts tax on the lease or rental receipts from the vehicle. A tax levied under this Article must be paid to the

Authority that levied the tax by the date an optional gross receipts tax would be payable to the Secretary of Revenue under G.S. 105-187.5 if the retailer who leases or rents the ~~private~~ U-drive-it passenger vehicle or motorcycle had elected to pay the optional gross receipts tax."

Section 36. S.L. 1997-139 is reenacted.

Section 37. Article 3 of Chapter 66 of the General Statutes is repealed.

Section 38(a). G.S. 105A-2(2)e. reads as rewritten:

"e. A sum owed as a result of having obtained public assistance payments under any of the following programs through an intentional false statement, intentional misrepresentation, intentional failure to disclose a material fact, or inadvertent household error:

1. ~~The Aid to Families with Dependent Children Work First Program or the Aid to Families with Dependent Children -- Emergency Assistance Program, enabled by provided in Article 2 of Chapter 108A, Article 2, Part 2, 108A of the General Statutes.~~
2. ~~The Work First Cash Assistance State-County Special Assistance for Adults Program established pursuant to federal waivers received by the Department of Health and Human Services on February 5, 1996, enabled by Part 3 of Article 2 of Chapter 108A of the General Statutes.~~
3. ~~The State-County Special Assistance for Adults Program, enabled by Chapter 108A, Article 2, Part 3. A successor program of one of these programs.~~
4. ~~A successor program of one of these programs, of the General Statutes or"~~

Section 38(b). This section becomes effective January 1, 2000.

Section 39. G.S. 120-70.105 reads as rewritten:

"§ 120-70.105. *Creation and membership of the Revenue Laws Study Committee.*

(a) Membership. -- The Revenue Laws Study Committee is established. The Committee consists of 16 members as follows:

- (1) Eight members appointed by the President Pro Tempore of the Senate; the persons appointed may be members of the Senate or public members.
- (2) Eight members appointed by the Speaker of the House of Representatives; the persons appointed may be members of the House of Representatives or public members.

(b) Terms. -- Terms on the Committee are for two years and begin on January 15 of each odd-numbered year, except the terms of the initial members, which begin on appointment. Legislative members may complete a term of service on the Committee even if they do not seek reelection or are not reelected to the General Assembly, but resignation or removal from service in the General Assembly constitutes resignation or removal from service on the Committee.

A member continues to serve until ~~his~~ a successor is appointed. A vacancy shall be filled within 30 days by the officer who made the original appointment."

Section 40. Article 8 of Chapter 136 of the General Statutes is repealed.

PART II. CONFORM STATUTORY NOMENCLATURE.

Section 41. The designation of G.S. 105-103 through G.S. 105-113 as Division I of Article 2 of Chapter 105 of the General Statutes is eliminated, so that Article 2 contains G.S. 105-33 through G.S. 105-113 without any subdivision into Parts.

Section 42. Division I of Article 4 of Chapter 105 of the General Statutes is redesignated Part 1.

Section 43. Division IS of Article 4 of Chapter 105 of the General Statutes is redesignated Part 1A.

Section 44. Division II of Article 4 of Chapter 105 of the General Statutes is redesignated Part 2.

Section 45. Division III of Article 4 of Chapter 105 of the General Statutes is redesignated Part 3.

Section 46. Division V of Article 4 of Chapter 105 of the General Statutes is redesignated Part 5.

Section 47. Division I of Article 5 of Chapter 105 of the General Statutes is redesignated Part 1.

Section 48(a). G.S. 105-164.4 through G.S. 105-164.12A are merged into Division II of Article 5 of Chapter 105 of the General Statutes without subdivision into Parts, and the designations for Parts 1 through 4 of that Division are eliminated.

Section 48(b). Division II of Article 5 of Chapter 105 of the General Statutes is redesignated Part 2.

Section 49. Division III of Article 5 of Chapter 105 of the General Statutes is redesignated Part 3.

Section 50. Division IV of Article 5 of Chapter 105 of the General Statutes is redesignated Part 4.

Section 51. Division V of Article 5 of Chapter 105 of the General Statutes is redesignated Part 5.

Section 52. Division VI of Article 5 of Chapter 105 of the General Statutes is redesignated Part 6.

Section 53. Division VII of Article 5 of Chapter 105 of the General Statutes is redesignated Part 7.

Section 54. Division VIII of Article 5 of Chapter 105 of the General Statutes is redesignated Part 8.

Section 55. The title of Article 1 of Chapter 105 of the General Statutes reads as rewritten:

"ARTICLE 1.

~~Schedule A.~~ Inheritance Tax."

Section 56. The title of Article 2A of Chapter 105 of the General Statutes reads as rewritten:

"ARTICLE 2A.

~~Schedule B-A.~~ Tobacco Products Tax."

Section 57. The title of Article 2B of Chapter 105 of the General Statutes reads as rewritten:

"ARTICLE 2B.

~~Schedule B-B.~~ Soft Drink Tax."

Section 58. The title of Article 2C of Chapter 105 of the General Statutes reads as rewritten:

"ARTICLE 2C.

~~Schedule B-C.~~ Alcoholic Beverage License and Excise Taxes."

Section 59. The title of Article 2D of Chapter 105 of the General Statutes reads as rewritten:

"ARTICLE 2D.

~~Schedule B-D.~~ Unauthorized Substances Taxes."

Section 60. The title of Article 3 of Chapter 105 of the General Statutes reads as rewritten:

"ARTICLE 3.

~~Schedule C.~~ Franchise Tax."

Section 61. The title of Article 4 of Chapter 105 of the General Statutes reads as rewritten:

"ARTICLE 4.

~~Schedule D.~~ Income Tax."

Section 62. The title of Article 5 of Chapter 105 of the General Statutes reads as rewritten:

"ARTICLE 5.

~~Schedule E.~~ Sales and Use Tax."

Section 63. The title of Article 6 of Chapter 105 of the General Statutes reads as rewritten:

"ARTICLE 6.

~~Schedule G.~~ Gift Taxes."

Section 64. The title of Article 8A of Chapter 105 of the General Statutes reads as rewritten:

"ARTICLE 8A.

~~Schedule I-A.~~ Gross Earnings Taxes on Freight Line Companies
in Lieu of Ad Valorem Taxes."

Section 65. The title of Article 8B of Chapter 105 of the General Statutes reads as rewritten:

"ARTICLE 8B.

~~Schedule I-B.~~ Taxes upon Insurance Companies."

Section 66. The title of Article 8D of Chapter 105 of the General Statutes reads as rewritten:

"ARTICLE 8D.

~~Schedule I-D.~~ Taxation of Savings and Loan
Associations."

Section 67. The title of Article 9 of Chapter 105 of the General Statutes reads as rewritten:

"ARTICLE 9.

~~Schedule J.~~ General Administration; Penalties and
Remedies."

Section 68. The following sections of the General Statutes are amended by deleting the phrase "This Division" each time it occurs and substituting "This Part":

G.S. 105-130
G.S. 105-131(a)
G.S. 105-131.1(b)
G.S. 105-133
G.S. 105-160

Section 69. The following sections of the General Statutes are amended by deleting the phrase "this Division" or "this division" each time it occurs and substituting "this Part":

G.S. 105-130.1
G.S. 105-130.2
G.S. 105-130.4(l)(1)
G.S. 105-130.4(m)
G.S. 105-130.5(a)(2)
G.S. 105-130.5(c)
G.S. 105-130.6
G.S. 105-130.8
G.S. 105-130.11
G.S. 105-130.12
G.S. 105-130.15
G.S. 105-130.16
G.S. 105-130.18
G.S. 105-130.22
G.S. 105-130.23
G.S. 105-130.25
G.S. 105-130.34
G.S. 105-130.41
G.S. 105-130.42
G.S. 105-131(b) & (c)
G.S. 105-134
G.S. 105-134.1
G.S. 105-134.3
G.S. 105-134.6
G.S. 105-151.1
G.S. 105-151.2
G.S. 105-151.11(a)
G.S. 105-151.12
G.S. 105-151.18(a) & (b)
G.S. 105-151.20
G.S. 105-151.22
G.S. 105-151.23
G.S. 105-151.24
G.S. 105-151.26
G.S. 105-152(a) through (d)
G.S. 105-154
G.S. 105-156
G.S. 105-158

G.S. 105-160.1
 G.S. 105-160.2
 G.S. 105-160.4(a)
 G.S. 105-160.5
 G.S. 105-160.8
 G.S. 105-163.010
 G.S. 105-163.013
 G.S. 105-163.014

Section 70. The following sections of the General Statutes are amended by deleting the phrase "Division I" each time it occurs and substituting the phrase "Part 1":

G.S. 105-131(b)(2)
 G.S. 105-164.44C
 G.S. 105-275.1(e)
 G.S. 105-277.001(f)
 G.S. 105-277.1A(f)

Section 71. The following sections of the General Statutes are amended by deleting the phrase "Division II" each time it occurs and substituting the phrase "Part 2":

G.S. 105-160.1
 G.S. 105-160.4(e)
 G.S. 105-163.011(b) & (b1)
 G.S. 105-163.012
 G.S. 105-163.15
 G.S. 105-269.6
 G.S. 105-275.2

Section 72. The following sections of the General Statutes are amended by deleting the phrase "Division V" each time it occurs and substituting the phrase "Part 5":

G.S. 105-116(a)
 G.S. 105-120(a)
 G.S. 105-120.2(f)
 G.S. 105-122(d)

Section 73. G.S. 105-7 reads as rewritten:

" 105-7. Estate tax.

(a) A tax in addition to the inheritance tax imposed by this ~~schedule is hereby~~ Article is imposed upon the transfer of the net estate of every decedent, whether a resident or nonresident of the State, where the inheritance tax imposed by this ~~schedule~~ Article is less than the maximum state death tax credit allowed by the Federal Estate Tax Act as contained in the Code because of ~~said tax herein imposed.~~ the tax imposed by this Article. In such a case, the inheritance tax ~~provided for by this schedule imposed by this Article~~ shall be increased by an estate tax on the net estate so that the aggregate amount of tax due this State ~~shall be equals~~ the maximum amount of credit allowed under ~~said the~~ the Federal Estate Tax Act. ~~Said~~ This additional tax shall be paid out of the same funds as any other tax against the estate.

(b) ~~Where~~ If no tax is imposed by this ~~schedule~~ Article because of the exemptions ~~herein~~ or otherwise, and a tax is due the United States under the

Federal Estate Tax Act, then a tax ~~shall be~~ is due this State equal to the maximum amount of the credit allowed under ~~said the~~ Federal Estate Tax Act.

(c) The administrative provisions of this ~~schedule, Article,~~ Article, wherever applicable, shall apply to the collection of the tax imposed by this section. The amount of the tax as imposed by subsection (a) of this section shall be computed in full accordance with the Federal Estate Tax Act as contained in the Code."

Section 74. G.S. 105-8 reads as rewritten:

"105-8. *Treatment allowed for gift tax paid.*

~~In case a tax has been imposed under Schedule G of the Revenue Act of 1937, or under subsequent acts, If a tax has been imposed under Article 6 of this Chapter upon any gift, and thereafter upon the death of the donor, the amount thereof of the gift is required by any provision of this Article to be included in the gross estate of the decedent, then there shall be credited against and applied in reduction of the tax, which would otherwise be chargeable against the beneficiaries of the estate under the provisions of this Article, an amount equal to the tax paid with respect to such the gift. Any additional tax found to be due because of the inclusion of gifts in the gross estate of the decedent, as provided herein, decedent shall be a tax against the estate and shall be paid out of the same funds as any other tax against the estate."~~

Section 75. The introductory language of G.S. 105-9 reads as rewritten:

"§ 105-9. *Deductions.*

In determining the clear market value of property taxed under this Article, ~~or schedule,~~ the following deductions, and no others, shall be allowed:"

Section 76. G.S. 105-114(a)(2) reads as rewritten:

"(2) Corporations not organized under the laws of this State for doing business in this State and for the benefit and protection which ~~such these~~ corporations receive from the government and laws of this State in doing business in this State.

If the corporation is organized under the laws of this State, the payment of the taxes levied by this Article shall be a condition precedent to the right to continue in ~~such the corporate~~ the corporate form of organization; and if the corporation is not organized under the laws of this State, payment of these taxes shall be a condition precedent to the right to continue to engage in doing business in this State. The taxes levied in this Article ~~or schedule shall be~~ are for the fiscal year of the State in which the taxes become due; except that the taxes levied in G.S. 105-122 ~~shall be~~ are for the income year of the corporation in which the taxes become due.

G.S. 105-122 does not apply to street transportation systems taxed under G.S. 105-120.1 or holding companies taxed under G.S. 105-120.2. G.S. 105-122 applies to a corporation taxed under another section of this Article only to the extent the taxes levied on the corporation in G.S. 105-122 exceed the taxes levied on the corporation in other sections of this Article."

Section 77. G.S. 105-122(a) reads as rewritten:

"(a) Every corporation, domestic and foreign, incorporated, or, by an act, domesticated under the laws of this State or doing business in this State, except as otherwise provided in this ~~Article or schedule~~, Article, shall, on or before the fifteenth day of the third month following the end of its income year, ~~annually, annually~~ make and deliver to the Secretary of Revenue ~~in such form as he may prescribe in the form prescribed by the Secretary a full, accurate~~ accurate, and complete report and statement signed by either its president, vice-president, treasurer, assistant treasurer, secretary or assistant secretary, containing such the facts and information ~~as may be~~ required by the Secretary of Revenue as shown by the books and records of the corporation at the close of ~~such the~~ income year.

There shall be annexed to the return required by this subsection the affirmation of the officer signing the return in the following form: "Under penalties prescribed by law, I hereby affirm that to the best of my knowledge and belief this return, including any accompanying schedules and statements, is true and complete. If prepared by a person other than taxpayer, ~~his~~ this affirmation is based on all information of which ~~he~~ the preparer has any knowledge."

Section 78. G.S. 105-127(b) is repealed.

Section 79. G.S. 105-130.26 reads as rewritten:

"§ 105-130.26. ~~Credit against corporate income tax for conversion of industrial boiler to wood fuel.~~

~~Any corporation which~~ A corporation that modifies or replaces an oil or gas-fired boiler or kiln and the associated fuel and residue handling equipment used in the manufacturing process of a manufacturing business located in this State with one ~~which that~~ that is capable of burning wood ~~shall be~~ is allowed as a credit against the tax imposed by this ~~Division, Part~~ an amount equal to fifteen percent (15%) of the installation and equipment cost of ~~such conversion; provided, that in order to secure the conversion paid during the taxable year. In order to claim~~ the credit allowed by this section, the taxpayer must own or control the business in which ~~such the~~ boiler or kiln is used at the time of ~~such conversion and payment in part or in whole for such installation and equipment must be made by the taxpayer during the tax year for which the credit is claimed; and the amount of credit allowed for any one income year shall be limited to fifteen percent (15%) of such costs paid during the year; and the the conversion.~~ The credit allowed by this section ~~shall may~~ not exceed the amount of the tax imposed by this ~~Division Part~~ Part for the taxable year reduced by the sum of all credits ~~allowable under this Division,~~ allowable, except for payments of tax made by or on behalf of the taxpayer. If a credit is granted under this section to a taxpayer engaged in the business of poultry production and that credit exceeds the tax imposed under this ~~Division, Part,~~ the excess may be carried forward ~~and applied to the tax imposed under this Division~~ for the succeeding five years."

Section 80. G.S. 105-130.27(a) reads as rewritten:

"(a) Credit Allowed. -- ~~Any corporation which~~ A corporation that constructs in North Carolina a distillery to make ethanol from agricultural or forestry products for qualified uses ~~shall be~~ is allowed a credit against the tax imposed by this ~~Division, Part.~~ Subject to the limitation provided in

subsection (d) of this section, the amount of the credit shall be equal to twenty percent (20%) of the installation and construction costs of the distillery, distillery paid during the year preceding the taxable year, and an additional ten percent (10%) of those costs if the distillery is to be powered by use of an alternative fuel source. No credit is allowed, however, for the costs of purchasing the land or site work, which includes rock, paving, and excavation. In order to secure the credit allowed by this section, the taxpayer must own or control the facility at the time of ~~construction, and payment for the installation and construction must be made by the taxpayer during the year preceding the year for which the credit is claimed.~~ The amount of the credit allowed for any one taxable year shall be limited to twenty percent (20%) of the installation and construction costs paid during such year, or thirty percent (30%) if the distillery is to be powered by an alternative fuel ~~source.~~ construction. Invoices or receipts shall be furnished to substantiate a claim or a credit under this section if requested by the ~~Secretary of Revenue.~~ Secretary. The credit allowed by this section ~~shall~~ may not exceed the amount of the tax imposed by this Division Part for the taxable year reduced by the sum of all credits ~~allowable under this Division,~~ allowable, except for payments of tax made by or on behalf of the taxpayer."

Section 81. G.S. 105-130.27A reads as rewritten:

"§ 105-130.27A. ~~Credit against corporate income tax for construction of a peat facility.~~

(a) ~~Any corporation which~~ A corporation that constructs in North Carolina a facility which that uses peat as the feedstock for the production of a commercially manufactured energy source to replace petroleum, natural gas or other gas, or another nonrenewable energy sources shall be source is allowed a credit against the tax imposed by this Division Part equal to twenty percent (20%) of the installation and equipment costs of ~~construction;~~ provided, that the credit shall not be allowed construction paid during the taxable year. No credit is allowed, however, to the extent that any of the cost of the system was provided by federal, State, or local grants. In order to secure the credit allowed by this section, the taxpayer must own or control ~~such the facility at the time of construction, and the credit allowed by this section shall not exceed construction.~~ The credit allowed by this section may not exceed the amount of the tax imposed by this Division Part for the taxable year reduced by the sum of all credits ~~allowable under this Division,~~ allowable, except for payments of tax made by or on behalf of the taxpayer.

(b) The amount of unused credit allowed under this section may be carried over for the next succeeding five years."

Section 82. G.S. 105-130.28(a) reads as rewritten:

"(a) Any corporation that constructs in North Carolina a facility for the production of photovoltaic equipment is allowed a credit against the tax imposed by this Division Part equal to twenty-five percent (25%) of the installation and equipment costs of ~~construction.~~ This credit shall not be allowed construction paid during the taxable year. No credit is allowed, however, to the extent that any of the costs of the equipment were provided by federal, State, or local grants. To secure the credit allowed by this section, the taxpayer must own or control the facility at the time of construction. The credit allowed by this section may not exceed the amount

of the tax imposed by this ~~Division Part~~ for the taxable year reduced by the sum of all credits ~~allowable under this Division~~, allowable, except payments of tax made by or on behalf of the taxpayer."

Section 83. G.S. 105-130.29 reads as rewritten:

"§ 105-130.29. ~~Credit against corporate income tax for construction of an olivine brick facility.~~

(a) Any corporation that constructs in North Carolina a facility for the production of olivine bricks for thermal storage ~~shall be~~ is allowed a credit against the tax imposed by this ~~Division Part~~ equal to twenty percent (20%) of the installation and equipment costs of ~~construction. This credit shall not be allowed construction paid during the taxable year.~~ construction. No credit is allowed, however, to the extent that any of the costs of the system were provided by federal, State, or local grants. To secure the credit allowed by this section, the taxpayer must own or control the facility at the time of construction. The credit allowed by this section may not exceed the amount of the tax imposed by this ~~Division Part~~ for the taxable year reduced by the sum of all credits ~~allowable under this Division~~, allowable, except payments of tax made by or on behalf of the taxpayer.

(b) The amount of credit allowed under this section may be carried over for the next succeeding five years."

Section 84. G.S. 105-130.30 reads as rewritten:

"§ 105-130.30. ~~Credit against corporate income tax for construction of a methane gas facility.~~

(a) Any corporation that constructs in North Carolina a facility for the production of methane gas from renewable biomass resources ~~shall be~~ is allowed a credit against the tax imposed by this ~~Division Part~~ equal to ten percent (10%) of the installation and equipment costs of ~~construction. construction paid during the taxable year.~~ construction. The credit allowed under this section may not exceed two thousand five hundred dollars (\$2,500) for any single installation. ~~This credit shall not be allowed~~ No credit is allowed, however, to the extent that any of the costs of the system were provided by federal, State, or local grants. To secure the credit allowed by this section, the taxpayer must own or control the facility at the time of construction. The credit allowed by this section may not exceed the amount of the tax imposed by this ~~Division Part~~ for the taxable year reduced by the sum of all credits ~~allowable under this Division~~, allowable, except payments of tax made by or on behalf of the taxpayer.

(b) As used in this section, "renewable biomass resources" means organic matter produced by terrestrial and aquatic plants and animals such as standing vegetation, aquatic crops, forestry and agricultural ~~residues~~ residues, and animal wastes that can be used for the production of energy."

Section 85. G.S. 105-130.31 reads as rewritten:

"§ 105-130.31. ~~Credit against corporate income tax for installation of a wind energy device.~~

(a) Any corporation that constructs or installs a wind energy device for the production of electricity at a site located in this State ~~shall be~~ is allowed a credit against the tax imposed by this ~~Division Part~~ equal to ten percent (10%) of the installation and equipment costs of the wind energy ~~device.~~ device paid during the taxable year. The credit allowed under this section

may not exceed one thousand dollars (\$1,000) for any single installation. ~~This credit shall not be allowed~~ No credit is allowed, however, to the extent that any of the costs of the system were provided by federal, State, or local grants. To secure the credit allowed by this section, the taxpayer must own or control the site at the time the wind energy device is installed. The credit allowed by this section may not exceed the amount of the tax imposed by this ~~Division Part~~ for the taxable year reduced by the sum of all credits ~~allowable under this Division,~~ allowable, except payments of tax made by or on behalf of the taxpayer.

(b) As used in this section, "wind energy device" means equipment (and parts solely related to the functioning of the equipment) that, when installed on a site, transmits or uses wind energy to generate electricity."

Section 86. G.S. 105-130.32 reads as rewritten:

"§ 105-130.32. ~~Credit against corporate income tax for installation of solar energy equipment for the production of heat or electricity in certain processes.~~

(a) Any corporation that constructs or installs solar energy equipment for the production of heat or electricity in the manufacturing or service processes of its business located in this State is allowed a credit against the tax imposed by this ~~Division Part~~ equal to thirty-five percent (35%) of the installation and equipment costs of the solar energy ~~equipment,~~ equipment paid during the taxable year. The credit allowed under this section may not exceed twenty-five thousand dollars (\$25,000) for any single installation. ~~This credit shall not be allowed~~ No credit is allowed, however, to the extent that any of the costs of the equipment were provided by federal, State, or local grants. To secure the credit allowed by this section, the taxpayer must own or control the business at the time the solar energy equipment is installed. The credit allowed by this section may not exceed the amount of the tax imposed by this ~~Division Part~~ for the taxable year reduced by the sum of all credits ~~allowable under this Division,~~ allowable, except payments of tax made by or on behalf of the taxpayer.

(b) As used in this section, "solar energy equipment" means equipment and materials designed to collect, store, transport, or control energy derived directly from the sun."

Section 87. G.S. 105-130.33(a) reads as rewritten:

"(a) Any corporation that constructs or installs a hydroelectric generator with a capacity of at least three kilowatts (3KW) at an existing dam or free flowing stream located in this State shall be allowed a credit against the tax imposed by this ~~Division Part~~ equal to ten percent (10%) of the installation and equipment costs of the hydroelectric ~~generator,~~ paid during the taxable year. The credit allowed under this section may not exceed five thousand dollars (\$5,000) for any single installation. ~~This credit shall not be allowed~~ No credit is allowed, however, to the extent that any of the costs of the system were provided by federal, State, or local grants. To secure the credit allowed by this section, the taxpayer must own or control the site at the time the hydroelectric generator is installed. The credit allowed by this section may not exceed the amount of the tax imposed by this ~~Division Part~~ for the taxable year reduced by the sum of all credits allowable under this ~~Division,~~ Part, except payments of tax made by or on behalf of the taxpayer."

Section 88. G.S. 105-130.36(a) reads as rewritten:

"(a) Any corporation that purchases conservation tillage equipment for use in a farming business, including tree farming, shall be allowed a credit against the tax imposed by this Division Part equal to twenty-five percent (25%) of the cost of the ~~equipment~~, equipment paid during the taxable year. This credit may not exceed two thousand five hundred dollars (\$2,500) for any ~~income taxable year~~ for any taxpayer. The credit may ~~only~~ be claimed only by the first purchaser of the equipment and may not be claimed by a corporation that purchases the equipment for resale or for use outside this State. This credit may not exceed the amount of tax imposed by this Division Part for the taxable year reduced by the sum of all credits ~~allowable under this Division~~, allowable, except tax payments made by or on behalf of the taxpayer. If the credit allowed by this section exceeds the tax imposed under this Division, Part, the excess may be carried forward ~~and applied to the tax imposed under this Division~~ for the succeeding five years. The basis in any equipment for which a credit is allowed under this section shall be reduced by the amount of credit allowable."

Section 89. G.S. 105-130.37(a) reads as rewritten:

"(a) Any corporation that grows a crop and permits the gleaning of the crop ~~during the taxable year is shall be~~ allowed a credit against the tax imposed by this Division Part equal to ten percent (10%) of the market price of the quantity of the gleaned crop. This credit may not exceed the amount of tax imposed by this Division Part for the taxable year reduced by the sum of all credits ~~allowable under this Division~~, allowable, except tax payments made by or on behalf of the taxpayer. No deduction is allowed under G.S. 105-130.5(b)(5) for the items for which a credit is claimed under this section. Any unused portion of the credit may be carried forward for the succeeding five years."

Section 90. G.S. 105-130.39 reads as rewritten:

"§ 105-130.39. *Credit for certain telephone subscriber line charges.*

(a) A corporation that provides local telephone service to low-income residential consumers at reduced rates pursuant to an order of the North Carolina Utilities Commission is allowed a credit against the tax imposed by this Division Part equal to the difference ~~between;~~ between the following:

- (1) The amount of receipts the corporation would have received during the taxable year from those low-income customers had the customers been charged the regular rates for local telephone service and ~~fees; and fees.~~
- (2) The amount billed those low-income customers for local telephone service during the taxable year.

(b) This credit is allowed only for a reduction in local telephone service rates and fees and is not allowed for any reduction in interstate subscriber line charges. This credit may not exceed the amount of tax imposed by this Division Part for the taxable year reduced by the sum of all credits ~~allowed under this Division~~, allowable, except tax payments made by or on behalf of the corporation."

Section 91. G.S. 105-134.7(a)(7) reads as rewritten:

"(7) The transitional adjustments provided in ~~Division I-S Part 1A~~ of this Article shall be made with respect to a shareholder's pro rata share of S Corporation income."

Section 92. G.S. 105-151 reads as rewritten:

"§ 105-151. *Tax credits for income taxes paid to other states by individuals.*

(a) An individual who is a resident of this State is allowed a credit against the taxes imposed by this Division Part for income taxes imposed by and paid to another state or country on income taxed under this Division, Part, subject to the following conditions:

- (1) The credit ~~shall be~~ is allowed only for taxes paid to another state or country on income derived from sources within that state or country that is taxed under its laws irrespective of the residence or domicile of the ~~recipient; provided, recipient,~~ recipient, except that whenever a taxpayer who is deemed to be a resident of this State under the provisions of this Division Part is deemed also to be a resident of another state or country under the laws of that state or country, the Secretary may, in his discretion, may allow a credit against the taxes imposed by this Division Part for taxes imposed by and paid to the other state or country on income taxed under this Division, Part.
- (2) The fraction of the gross income, as calculated under the Code and adjusted as provided in G.S. 105-134.6 and G.S. 105-134.7, that is subject to income tax in another state or country shall be ascertained, and the North Carolina net income tax before credit under this section shall be multiplied by that fraction. The credit allowed ~~shall be~~ is either the product thus calculated or the income tax actually paid the other state or country, whichever is smaller.
- (3) Receipts showing the payment of income taxes to another state or country and a true copy of a return or returns upon the basis of which the taxes are assessed shall be filed with the Secretary ~~at, or prior to, the time when the credit is claimed.~~ on account of a deficiency assessment, a true copy of the notice assessing or proposing to assess the deficiency, as well as a receipt showing the payment of the deficiency, shall be filed.

(b) If any taxes paid to another state or country for which a taxpayer has been allowed a credit under this section are at any time credited or refunded to the taxpayer, a tax equal to that portion of the credit allowed for the taxes so credited or refunded ~~shall be~~ is due and payable from the taxpayer and ~~shall be~~ is subject to the penalties and interest provided in Subchapter I of this Chapter."

Section 93. G.S 105-151.5 reads as rewritten:

"§ 105-151.5. *Credit for conversion of industrial boiler to wood fuel.*

A ~~person~~ taxpayer who modifies or replaces an oil or gas-fired boiler or kiln and the associated fuel and residue handling equipment used in the manufacturing process of a manufacturing business located in this State with one that is capable of burning wood ~~shall be~~ is allowed as a credit against the tax imposed by this Division Part an amount equal to fifteen percent (15%) of the installation and equipment cost of the ~~conversion; provided, that in order to secure~~ conversion paid during the taxable year. In order to claim the credit allowed by this section, the taxpayer must own or control the business in which the boiler or kiln is used at the time of the conversion and payment in part or in whole for the installation and equipment must be

~~made by the taxpayer during the taxable year for which the credit is claimed. The amount of credit allowed for any one taxable year may not exceed fifteen percent (15%) of the costs paid during the year.~~ conversion. The credit allowed by this section may not exceed the amount of the tax imposed by this ~~Division~~ Part for the taxable year reduced by the sum of all credits ~~allowable under this Division,~~ allowable, except for payments of tax made by or on behalf of the taxpayer. If a credit is granted under this section to a taxpayer engaged in the business of poultry production and that credit exceeds the tax imposed under this ~~Division,~~ Part, the excess may be carried forward ~~and applied to the tax imposed under this Division~~ for the succeeding five years."

Section 94. G.S. 105-151.6(a) reads as rewritten:

"(a) Credit Allowed. -- Any person who constructs in North Carolina a distillery to make ethanol from agricultural or forestry products for qualified uses ~~shall be~~ is allowed a credit against the tax imposed by this ~~Division,~~ Part. Subject to the limitation provided in subsection (d) of this section, the ~~amount of the credit shall be equal to~~ is twenty percent (20%) of the installation and construction costs of the ~~distillery,~~ distillery paid during the year preceding the taxable year, and an additional ten percent (10%) of those costs if the distillery is to be powered by use of an alternative fuel source. No credit is allowed, however, for the costs of purchasing the land or site work, which includes rock, paving, and excavation. In order to secure the credit allowed by this section, the taxpayer must own or control the facility at the time of construction, ~~and payment for the installation and construction must be made by the taxpayer during the year preceding the year for which the credit is claimed. The amount of the credit allowed for any one taxable year shall be limited to twenty percent (20%) of the installation and construction costs paid during such year, or thirty percent (30%) if the distillery is to be powered by an alternative fuel source.~~ construction. Invoices or receipts shall be furnished to substantiate a claim or a credit under this section if requested by the ~~Secretary of Revenue,~~ Secretary. The credit allowed by this section ~~shall~~ may not exceed the amount of the tax imposed by this ~~Division~~ Part for the taxable year reduced by the sum of all credits ~~allowable under this Division,~~ allowable, except for payments of tax made by or on behalf of the taxpayer."

Section 95. G.S. 105-151.7(a) reads as rewritten:

"(a) A person who constructs or installs a hydroelectric generator with a capacity of at least three kilowatts (3KW) at an existing dam or free flowing stream located in this State ~~shall be~~ is allowed as a credit against the tax imposed by this ~~Division~~ Part an amount equal to ten percent (10%) of the installation and equipment costs of the hydroelectric ~~generator,~~ generator paid during the taxable year. The credit allowed under this section may not exceed five thousand dollars (\$5,000) for any single installation. ~~This credit shall not be allowed~~ No credit is allowed, however, to the extent that any of the costs of the system were provided by federal, State, or local grants. To secure the credit allowed by this section, the taxpayer must own or control the site at the time the hydroelectric generator is installed. The credit allowed by this section may not exceed the amount of the tax imposed by this ~~Division~~ Part for the taxable year reduced by the sum of all credits ~~allowable~~

~~under this Division, allowable, except payments of tax made by or on behalf of the taxpayer."~~

Section 96. G.S. 105-151.8(a) reads as rewritten:

"(a) A person who constructs or installs solar energy equipment for the production of heat or electricity in the manufacturing or service processes of the person's business located in this State is allowed a credit against the tax imposed by this ~~Division Part~~ equal to thirty-five percent (35%) of the installation and equipment costs of the solar energy equipment, equipment paid during the taxable year. The credit allowed under this section may not exceed twenty-five thousand dollars (\$25,000) for any single installation. ~~This credit shall not be allowed~~ No credit is allowed, however, to the extent that any of the costs of the equipment were provided by federal, State, or local grants. To secure the credit allowed by this section, the taxpayer must own or control the business at the time the solar energy equipment is installed. The credit allowed by this section may not exceed the amount of tax imposed by this ~~Division Part~~ for the taxable year reduced by the sum of all credits ~~allowable under this Division, allowable,~~ except payments of tax made by or on behalf of the taxpayer. In no case ~~shall a tax credit be~~ is a credit allowed under both this section and G.S. 105-151.2."

Section 97. G.S. 105-151.9(a) reads as rewritten:

"(a) A person who constructs or installs a wind energy device for the production of electricity at a site located in this State ~~shall be~~ is allowed as a credit against the tax imposed by this ~~Division Part~~ an amount equal to ten percent (10%) of the installation and equipment costs of the wind energy device, device paid during the taxable year. The credit allowed under this section may not exceed one thousand dollars (\$1,000) for any single installation. ~~This credit shall not be allowed~~ No credit is allowed, however, to the extent that any of the costs of the system were provided by federal, State, or local grants. To secure the credit allowed by this section, the taxpayer must own or control the site at the time the wind energy device is installed. The credit allowed by this section may not exceed the amount of the tax imposed by this ~~Division Part~~ for the taxable year reduced by the sum of all credits ~~allowable under this Division, allowable,~~ except payments of tax made by or on behalf of the taxpayer."

Section 98. G.S. 105-151.10(a) reads as rewritten:

"(a) A ~~person taxpayer~~ who constructs in North Carolina a facility for the production of methane gas from renewable biomass resources shall be allowed as a credit against the tax imposed by this ~~Division Part~~ an amount equal to ten percent (10%) of the installation and equipment costs of construction, construction paid during the taxable year. The credit allowed under this section may not exceed two thousand five hundred dollars (\$2,500) for any single installation. ~~This credit shall not be allowed~~ No credit is allowed, however, to the extent that any of the costs of the system were provided by federal, State, or local grants. To secure the credit allowed by this section, the taxpayer must own or control the facility at the time of construction. The credit allowed by this section may not exceed the amount of the tax imposed by this ~~Division Part~~ for the taxable year reduced by the sum of all credits ~~allowable under this Division, allowable,~~ except payments of tax made by or on behalf of the taxpayer."

Section 99. G.S. 105-151.11(c) reads as rewritten:

"(c) Limitations. -- No credit shall be allowed under this section for amounts deducted from gross income in calculating taxable income under the Code. The credit allowed by this section may not exceed the amount of tax imposed by this ~~Division Part~~ for the taxable year reduced by the sum of all credits ~~allowable under this Division,~~ allowable, except for payments of tax made by or on behalf of the taxpayer. No credit shall be allowed under this section with respect to employment-related expenses paid by a nonresident of this State."

Section 100. G.S. 105-151.13(a) reads as rewritten:

"(a) A ~~person taxpayer~~ who purchases conservation tillage equipment for use in a farming business, including tree farming, shall be allowed as a credit against the tax imposed by this ~~Division Part~~ an amount equal to twenty-five percent (25%) of the cost of the ~~equipment,~~ equipment paid during the taxable year. This credit may not exceed two thousand five hundred dollars (\$2,500) for any taxable year. The credit may be claimed only by the first purchaser of the equipment and may not be claimed by a person who purchases the equipment for resale or for use outside this State. This credit may not exceed the amount of tax imposed by this ~~Division Part~~ for the taxable year reduced by the sum of all credits ~~allowable under this Division,~~ allowable, except tax payments made by or on behalf of the taxpayer. If the credit allowed by this section exceeds the tax imposed under this ~~Division, Part,~~ the excess may be carried forward ~~and applied to the tax imposed under this Division~~ for the next succeeding five years. The basis in any equipment for which a credit is allowed under this section shall be reduced by the amount of the credit allowable."

Section 101. G.S. 105-151.14(a) reads as rewritten:

"(a) A ~~person taxpayer~~ who grows a crop and permits the gleaning of the crop during the taxable year shall be allowed as a credit against the tax imposed by this ~~Division Part~~ an amount equal to ten percent (10%) of the market price of the quantity of the gleaned crop. This credit may not exceed the amount of tax imposed by this ~~Division Part~~ for the taxable year reduced by the sum of all credits ~~allowable under this Division,~~ allowable, except tax payments made by or on behalf of the taxpayer. In order to claim the credit allowed under this section, the taxpayer must add the market price of the gleaned crop to taxable income as provided in G.S. 105-134.6(c). Any unused portion of the credit may be carried forward for the next succeeding five years."

Section 102. G.S. 105-151.18(d) reads as rewritten:

"(d) Limitations. -- A nonresident or part-year resident who claims the credit allowed by this section shall reduce the amount of the credit by multiplying it by the fraction calculated under G.S. 105-134.5(b) or (c), as appropriate. The credit allowed under this section may not exceed the amount of tax imposed by this ~~Division Part~~ for the taxable year reduced by the sum of all credits ~~allowed under this Division,~~ allowable, except payments of tax made by or on behalf of the taxpayer."

Section 103. G.S. 105-151.21(a) reads as rewritten:

"(a) Credit. -- An individual engaged in the business of farming is allowed a credit against the tax imposed by this ~~Division Part~~ equal to the

amount of property taxes the individual paid at par during the taxable year on farm machinery and on attachments and repair parts for farm machinery. In addition, an individual shareholder of an S Corporation engaged in the business of farming is allowed a credit against the tax imposed by this Division Part equal to the shareholder's pro rata share of the amount of property taxes the S Corporation paid at par during the taxable year on farm machinery and on attachments and repair parts for farm machinery. The total credit allowed under this section may not exceed one thousand dollars (\$1,000) for the taxable year and may not exceed the amount of tax imposed by this Division Part for the taxable year reduced by the sum of all credits ~~allowed under this Division~~, allowable, except payments of tax made by or on behalf of the taxpayer. To claim the credit, the taxpayer shall attach to the return a copy of the tax receipt for the property taxes for which credit is claimed. The receipt must indicate that the taxes have been paid and the amount and date of the payment."

Section 104. G.S. 105-152(e) reads as rewritten:

"(e) Joint Returns. -- A husband and wife shall file a single income tax return jointly if (i) their federal taxable income is determined on a joint federal return and (ii) both spouses are residents of this State or both spouses have North Carolina taxable income. Except as otherwise provided in this Division, Part, a wife and husband filing jointly are treated as one taxpayer for the purpose of determining the tax imposed by this Division, Part. A husband and wife filing jointly are jointly and severally liable for the tax imposed by this Division Part reduced by the sum of all credits ~~allowable under this Division~~ allowable including tax payments made by or on behalf of the husband and wife. However, if a spouse has been relieved of liability for federal tax attributable to a substantial understatement by the other spouse pursuant to section 6013 of the Code, that spouse is not liable for the corresponding tax imposed by this Division Part attributable to the same substantial understatement by the other spouse. A wife and husband filing jointly have expressly agreed that if the amount of the payments made by them with respect to the taxes for which they are liable, including withheld and estimated taxes, exceeds the total of the taxes due, refund of the excess may be made payable to both spouses jointly or, if either is deceased, to the survivor alone."

Section 105. G.S. 105-160.3(a) reads as rewritten:

"(a) Except as otherwise provided in this section, the credits allowed to an individual against the tax imposed by Division II Part 2 of this Article shall be allowed to the same extent to an estate or a trust against the tax imposed by this Division, Part. Any credit computed as a percentage of income received shall be apportioned between the estate or trust and the beneficiaries based on the distributions made during the taxable year. No credit may exceed the amount of the tax imposed by this Division Part for the taxable year reduced by the sum of all credits ~~allowable under this Division~~, allowable, except for payments of tax made by or on behalf of the estate or trust."

Section 106. G.S. 105-164.3(22) reads as rewritten:

"(22) "Use tax" means ~~and includes~~ the tax imposed by Part 3 in Division II 2 of this Article."

Section 107. G.S. 105-164.13(5) reads as rewritten:

"(5) Manufactured products produced and sold by manufacturers or producers to other manufacturers, producers, or registered ~~wholesale or retail~~ retailers or wholesale merchants, for the purpose of resale except as modified by ~~Division I, G.S. 105-164.3, subdivision (23). Provided, however, this exemption shall G.S. 105-164.3(23).~~ This exemption does not extend to or include retail sales to users or consumers not for resale."

Section 108. G.S. 105-164.26 reads as rewritten:

"§ 105-164.26. *Presumption that sales are taxable.*

For the purpose of the proper administration of ~~this division~~ of this Article and to prevent evasion of the retail sales tax, it shall be presumed that all gross receipts of wholesale merchants and retailers are subject to the retail sales tax until the contrary is established by proper records as required ~~herein~~ in this Article. It shall be prima facie presumed that tangible personal property sold by any person for delivery in this State, however made, and by carrier or otherwise, is sold for storage, ~~use~~ use, or other consumption in this State, and a like presumption shall apply to tangible personal property delivered ~~without~~ outside this State and brought to this State by the ~~purchaser thereof, purchaser.~~ "

Section 109. G.S. 105-228.1 reads as rewritten:

"§ 105-228.1. *Defining taxes levied and assessed in this Article.*

The purpose of this Article is to levy a fair and equal tax under authority of ~~Article V, Sec. 3 of the Constitution of North Carolina~~ Section 2(2) of Article V of the North Carolina Constitution and to provide a practical means for ascertaining and collecting it. The taxes levied and assessed in ~~this schedule shall be upon the gross earnings~~ Article are on gross earnings, as defined in the Article, and ~~shall be~~ are in lieu of ad valorem taxes upon the properties of ~~individuals, firms, or corporations so taxed herein~~ persons taxed in this Article. "

Section 110. G.S. 105-266(c) reads as rewritten:

"(c) Statute of Limitations. -- The period in which a refund must be demanded or discovered under this section is determined as follows:

- (1) General Rule. -- No overpayment shall be refunded, whether upon discovery or receipt of written demand, if the discovery is not made or the demand is not received within three years after the date set by the statute for the filing of the return or within six months after the payment of the tax alleged to be an overpayment, whichever is later.
- (2) Worthless Debts or Securities. -- Section 6511(d)(1) of the Code applies to an overpayment of the tax levied in ~~Division II or III Part 2 or 3~~ of Article 4 of this Chapter to the extent the overpayment is attributable to either of the following:
 - a. The deductibility by the taxpayer under section 166 of the Code of a debt that becomes worthless, or under section 165(g) of the Code of a loss from a security that becomes worthless.
 - b. The effect of the deductibility of a debt or loss described in subpart a. of this subdivision on the application of a carryover to the taxpayer.

- (3) Capital Loss and Net Operating Loss Carrybacks. -- Section 6511(d)(2) of the Code applies to an overpayment of the tax levied in ~~Division II or III~~ Part 2 or 3 of Article 4 of this Chapter to the extent the overpayment is attributable to a capital loss carryback under section 1212(c) of the Code or to a net operating loss carryback under section 172 of the Code.
- (4) Federal Determination. -- When a taxpayer files with the Secretary a return that reflects a federal determination and the return is filed within the required time, the period in which a refund must be demanded or discovered is one year after the return reflecting the federal determination is filed or three years after the original return was filed or due to be filed, whichever is later."

Section 111. G.S. 105-309(d) reads as rewritten:

"(d) Personal property shall be listed to indicate the township and municipality, if any, in which it is taxable and shall be itemized by the taxpayer in such detail as may be prescribed by an abstract form approved by the Department of Revenue. Personal property shall also be listed to indicate which property, if any, is subject to a tax credit under ~~Division IV of Article 4 of this Chapter~~. G.S. 105-151.21.

- (1) If the assessor considers it necessary to obtain a complete listing of personal property, ~~he~~ the assessor may require a taxpayer to submit additional information, inventories, or itemized lists of personal property.
- (2) At the request of the assessor, the taxpayer shall furnish any information ~~he may have~~ the taxpayer has with respect to the true value of the personal property ~~he~~ the taxpayer is required to list."

Section 112. G.S. 105-366(b)(5) reads as rewritten:

"(5) The stock of goods or fixtures of a wholesale or ~~retail merchant~~ (as defined in Schedule E of the Revenue Act) merchant or retailer, as defined in G.S. 105-164.3, in the hands of a purchaser or transferee thereof, or any other personal property of the purchaser or transferee of such the property, if the taxes on the goods or fixtures remain unpaid 30 days after the date of the sale or transfer, but in such a case the transfer. In the case of other personal property of the purchaser or transferee, the levy or attachment must be made within six months of the sale or transfer."

Section 113. G.S. 105-366(d) reads as rewritten:

"(d) Remedies against Sellers and Purchasers of Stocks of Goods or Fixtures of Wholesale or ~~Retail Merchants~~. Merchants or Retailers. --

- (1) Any wholesale or ~~retail merchant~~ (as defined in Schedule E of the Revenue Act) merchant or retailer, as defined in G.S. 105-164.3, who sells or transfers the major part of his its stock of goods, materials, supplies, or fixtures, other than in the ordinary course of business or who goes out of business, shall; business, or who goes out of business, must take the following actions:
- At least 48 hours prior to the date of the pending sale, transfer, or termination of business, give notice ~~thereof~~ to the

- assessors and tax collectors of the taxing units in which ~~his~~ the business is ~~located, and located.~~
- b. Within 30 days of the sale, transfer, or termination of business, pay all taxes due or to become due on the transferred property on the first day of September of the current calendar year.
- (2) Any person to whom the major part of the stock of goods, materials, supplies, or fixtures of a wholesale ~~or retail merchant~~ (as defined in Schedule E of the Revenue Act) merchant or retailer is sold or transferred, other than in the ordinary course of business, or who becomes the successor in business of a wholesale ~~or retail merchant~~ merchant or retailer shall withhold from the purchase money paid to the merchant an amount sufficient to pay the taxes due or to become due on the transferred property on the first day of September of the current calendar year until the former owner or seller produces either a receipt from the tax collector showing that the taxes have been paid or a certificate that no taxes are due. If the purchaser or successor in business fails to withhold a sufficient amount of the purchase money to pay the taxes as required by this subsection ~~(d)~~ and the taxes remain unpaid after the 30-day period allowed, ~~he shall be the purchaser or successor is~~ personally liable for the amount of the taxes unpaid, and his unpaid. This liability may be enforced by means of a civil action brought in the name of the taxing unit against ~~him~~ the purchaser or successor in an appropriate trial division of the General Court of Justice in the county in which the taxing unit is located.
- (3) Whenever any wholesale ~~or retail merchant~~ (as defined in Schedule E of the Revenue Act) merchant or retailer sells or transfers the major part of ~~his~~ its stock of goods, materials, supplies, or fixtures, other than in the ordinary course of business, or goes out of ~~business,~~ business and the taxes due or to become due on the transferred property on the first day of September of the current calendar year are unpaid, the tax collector, to enforce collection of the unpaid taxes, ~~may;~~ may do any of the following:
- Levy on or attach any personal property of the ~~seller; or~~ seller.
 - If the taxes remain unpaid 30 days after the date of the transfer or termination of business, levy on or attach any of the property transferred in the hands of the transferee or successor in business, or any other personal property of the transferee or successor in business, but in either case the levy or attachment must be made within six months of the transfer or termination of business.
- (4) In using the remedies provided in this ~~subsection (d),~~ subsection, the amount of taxes not yet determined shall be computed in accordance with G.S. 105-359, and any applicable discount shall be allowed."

PART III. EFFECTIVE DATE.

Section 114. Except as otherwise provided in this act, this act is effective when it becomes law.

In the General Assembly read three times and ratified his the 6th day of August, 1998.

Became law upon approval of the Governor at 8:58 a.m. on the 14th day of August, 1998.

H.B. 1415

SESSION LAW 1998-99

AN ACT TO STRENGTHEN THE SEDIMENTATION POLLUTION CONTROL ACT OF 1973, AS RECOMMENDED BY THE SEDIMENTATION CONTROL COMMISSION AND THE ENVIRONMENTAL REVIEW COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 113A-57(2) reads as rewritten:

"(2) The angle for graded slopes and fills shall be no greater than the angle which can be retained by vegetative cover or other adequate erosion-control devices or structures. In any event, slopes left exposed will, within ~~30~~ 15 working days or 30 calendar days of completion of any phase of grading, whichever period is shorter, be planted or otherwise provided with ground cover, devices, or structures sufficient to restrain erosion."

Section 2. G.S. 113A-65.1(d) reads as rewritten:

"(d) The directives of a stop-work order become effective upon service of the order. Thereafter, any person notified of the stop-work order who violates any of the directives set out in the order may be assessed a civil penalty as provided in G.S. 113A-64(a). A stop-work order issued pursuant to this section may be issued for a period not to exceed ~~three~~ five days."

Section 3. This act becomes effective 1 October 1998.

In the General Assembly read three times and ratified this the 6th day of August, 1998.

Became law upon approval of the Governor at 8:59 a.m. on the 14th day of August, 1998.

H.B. 1422

SESSION LAW 1998-100

AN ACT TO REMOVE UNCONSTITUTIONAL RESTRICTIONS ON INDIVIDUAL INCOME TAX CREDITS FOR CHILD CARE AND FOR CONSTRUCTING DWELLINGS FOR THE HANDICAPPED.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-151.1 reads as rewritten:

"§ 105-151.1. ~~Tax credit~~ Credit for construction of dwelling units for handicapped persons.

~~There is allowed to resident owners~~ An owner of multifamily rental units located in this State as is allowed a credit against the tax imposed by this Division ~~an amount~~ equal to five hundred fifty dollars (\$550.00) for each

dwelling unit constructed by the ~~resident~~ owner that conforms to Volume I-C of the North Carolina Building Code for the taxable year within which the construction of the dwelling unit is completed. The credit is allowed only for dwelling units completed during the taxable year that were required to be built in compliance with Volume I-C of the North Carolina Building Code. If the credit allowed by this section exceeds the tax imposed by this Division reduced by all other credits allowed, the excess may be carried forward for the next succeeding year. In order to claim the credit allowed by this section, the taxpayer ~~shall file with its~~ must file with the income tax return a copy of the occupancy permit on the face of which is recorded by the building inspector the number of units completed during the taxable year that conform to Volume I-C of the North Carolina Building Code. After recording the number of these units on the face of the occupancy permit, the building inspector shall promptly forward a copy of the permit to the Building Accessibility Section of the Department of Insurance."

Section 2. G.S. 105-151.11(c) reads as rewritten:

"(c) Limitations. -- A nonresident or part-year resident who claims the credit allowed by this section shall reduce the amount of the credit by multiplying it by the fraction calculated under G.S. 105-134.5(b) or (c), as appropriate. No credit shall be allowed under this section for amounts deducted from gross income in calculating taxable income under the Code. The credit allowed by this section may not exceed the amount of tax imposed by this Division for the taxable year reduced by the sum of all credits allowable under this Division, except for payments of tax made by or on behalf of the taxpayer. ~~No credit shall be allowed under this section with respect to employment-related expenses paid by a nonresident of this State.~~"

Section 3. This act is effective for taxable years beginning on or after January 1, 1998.

In the General Assembly read three times and ratified this the 6th day of August, 1998.

Became law upon approval of the Governor at 2:00 p.m. on the 17th day of August, 1998.

S.B. 1442

SESSION LAW 1998-101

AN ACT TO AUTHORIZE UNION COUNTY TO SELL LAND THAT IS CURRENTLY USED FOR COMMUNITY COLLEGE PURPOSES AND USE THE PROCEEDS FOR COMMUNITY COLLEGE CAPITAL EXPENDITURES.

The General Assembly of North Carolina enacts:

Section 1. Notwithstanding any other provision of law, Union County may sell up to two acres of land that is currently used for community college purposes. Union County shall use the proceeds of the sale only for community college capital expenditures in Union County. The proceeds of the sale that are used for this purpose shall not be considered non-State matching funds pursuant to G.S. 115D-31 for purposes of future grants.

Section 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 17th day of August, 1998.

Became law on the date it was ratified.

H.B. 1275

SESSION LAW 1998-102

AN ACT TO EXTEND THE PERMISSIBLE LENGTH OF LEASES ENTERED INTO BY THE STATESVILLE MUNICIPAL AIRPORT FROM TWENTY TO TWENTY-FIVE YEARS.

The General Assembly of North Carolina enacts:

Section 1. Section 1 of Chapter 883 of the 1987 Session Laws is amended by deleting "20 years" and substituting "25 years."

Section 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 17th day of August, 1998.

Became law on the date it was ratified.

S.B. 1112

SESSION LAW 1998-103

AN ACT TO ALLOW ABSENTEE VOTING IN LAURINBURG CITY ELECTIONS CONDUCTED BY THE MUNICIPAL BOARD OF ELECTIONS.

The General Assembly of North Carolina enacts:

Section 1. The Charter of the City of Laurinburg, being Chapter 586, Session Laws of 1989, is amended by adding a new section to read:

"Sec. 4-2. **Absentee Voting.** Absentee voting shall be allowed in the City of Laurinburg if city elections are conducted by a municipal board of elections, and any references in G.S. 163-302 and Articles 20 and 21 of Chapter 163 of the General Statutes that refer to the county board of elections shall, for the City of Laurinburg, refer to the municipal board of elections if city elections are conducted by a municipal board of elections. The State Board of Elections may adopt rules to regulate this section."

Section 2. This act becomes effective with respect to all elections held on or after January 1, 1999.

In the General Assembly read three times and ratified this the 18th day of August, 1998.

Became law on the date it was ratified.

S.B. 1238

SESSION LAW 1998-104

AN ACT TO EXEMPT FORSYTH COUNTY FROM CERTAIN STATUTORY REQUIREMENTS IN THE RENOVATION OF FORMER TOBACCO FACTORIES FOR COUNTY GOVERNMENT OFFICES, PARKING, AND RELATED FACILITY NEEDS.

The General Assembly of North Carolina enacts:

Section 1. Notwithstanding the provisions of G.S. 143-128, 143-129, 143-131, and 143-132, Forsyth County may enter into contracts for the renovation of former RJ Reynolds tobacco factory building number 12 for county government offices, parking, and related facility needs in the manner and upon the terms and conditions Forsyth County considers appropriate.

Section 2. This act is effective when it becomes law and expires June 30, 2001.

In the General Assembly read three times and ratified this the 18th day of August, 1998.

Became law on the date it was ratified.

H.B. 1602

SESSION LAW 1998-105

AN ACT TO REVISE AND CONSOLIDATE THE CHARTER OF THE TOWN OF ROWLAND.

The General Assembly of North Carolina enacts:

Section 1. The Charter of the Town of Rowland is revised and consolidated to read as follows:

"THE CHARTER OF THE TOWN OF ROWLAND.

"ARTICLE 1. INCORPORATION, CORPORATE POWERS, AND BOUNDARIES.

"Section 1.1 **Incorporation.** The Town of Rowland, North Carolina, in Robeson County, and the inhabitants thereof, shall continue to be a municipal body politic and corporate, under the name of the 'Town of Rowland', hereinafter at times referred to as the 'Town'.

"Section 1.2. **Powers.** The Town shall have and may exercise all of the powers, duties, rights, privileges, and immunities conferred upon the Town of Rowland specifically by this Charter or upon municipal corporations by general law. The term 'general law' is employed herein as defined in G.S. 160A-1.

"Section 1.3. **Corporate Boundaries.** The corporate boundaries shall be those existing at the time of ratification of this Charter, as set forth on the official map of the Town and as they may be altered from time to time in accordance with law. An official map of the Town, showing the current municipal boundaries, shall be maintained in the office of the Town Clerk and shall be available for public inspection. Upon alteration of the corporate limits pursuant to law, the appropriate changes to the official map shall be made, and copies shall be filed in the office of the Secretary of State, the Robeson County Register of Deeds, and the appropriate board of elections.

"ARTICLE 2. GOVERNING BODY.

"Section 2.1. **Identification.** The Town Board of Commissioners hereinafter referred to as the 'Board', shall be the governing body of the Town.

"Section 2.2. **Composition; Terms of Office.** The Town Board shall be composed of four Commissioners to be elected by all the qualified voters of the Town voting at large for terms of four years, or until their successors are elected and qualified, and the Mayor.

"Section 2.3. **Mayor; Term of Office; Duties.** The Mayor shall be elected by all the qualified voters of the Town for a term of two years or until a successor is elected and qualified. The Mayor shall be the official head of the Town government and shall preside at meetings of the Board, shall have the right to vote only when there is an equal division on any question or matter before the Board, and shall exercise the powers and duties conferred by law or as directed by the Board.

"Section 2.4. **Qualifications for Office; Compensation; Vacancies.** The qualifications and compensation of the Mayor and Commissioners shall be in accordance with general law. In addition, no Mayor or Commissioner shall be qualified to hold office if that person: (i) is more than 30 days delinquent in the payment of any sum of money owed by that person to the Town of Rowland, (ii) has been convicted of any felony by any court of competent jurisdiction, (iii) has failed to attend more than three meetings of the Town Board of which that person has had proper notice. If the Town Board determines that one of the above-listed qualifications has been violated by a Commissioner or the Mayor and that such violation was within the control of the violator or that the violation can reasonably be expected to continue for an additional three months, the Board shall declare the position of the violator vacant and shall proceed to fill the vacancy. Vacancies shall be filled as provided below.

"Section 2.5. **Mayor Pro Tempore.** The Board shall elect one of its members as Mayor Pro Tempore to perform the duties of the Mayor during the Mayor's absence or disability, in accordance with general law. While presiding at meetings of the Board, the Mayor Pro Tempore shall be entitled to cast his vote as a Commissioner, but shall not cast an additional deciding vote in the case of a tie vote. The Mayor Pro Tempore shall serve in such capacity at the pleasure of the Board.

"Section 2.6. **Meetings.** In accordance with general law, the Board shall establish a suitable time and place for its regular meeting. Special and emergency meetings may be held as provided by general law. The quorum provisions of G.S. 160A-74 shall apply. Official action of the Board shall in every instance be by majority vote, provided that a quorum, consisting of a majority of the actual membership of the Board, is present. Vacant seats are to be subtracted from the normal Board membership to determine the actual membership.

"Section 2.7. **Quorum.** A majority of the actual membership of the council plus the Mayor (or the Mayor Pro Tempore), excluding vacant seats, shall constitute a quorum. A member who has withdrawn from a meeting without being excused by majority vote of the remaining members present shall be counted as present for purposes of determining whether or not a quorum is present. Any number of commissioner(s) attending a duly called meeting or public hearing may, by majority vote, with or without the presence of a presiding officer, recess the meeting or hearing to another time, without the necessity for additional publicity of the meeting or hearing.

"ARTICLE 3. ELECTIONS.

"Section 3.1. **Regular Municipal Elections.** Regular municipal elections shall be held in each odd-numbered year in accordance with the uniform municipal election laws of North Carolina. Elections shall be conducted on

a nonpartisan basis and the results determined using the nonpartisan election and runoff election method as provided in G.S. 163-279(a)(4) and G.S. 163-293.

"Section 3.2. **Election of Mayor.** A Mayor shall be elected in each regular municipal election.

"Section 3.3. **Election of Commissioners.** Two Commissioners shall be elected in each regular municipal election.

"Section 3.4. **Special Elections to Fill Vacancies.** If there is a vacancy in the office of Mayor or Commissioner after qualification or because of a refusal to qualify, a special election shall be called by the Town Board and shall be held to fill the vacancy. However, if the vacancy occurs after the opening date for filing of candidacy under the General Statutes in the year in which the term is to expire, no special election shall be held. In such case, the provisions of G.S. 160A-63 shall control. Candidates in any special election may file their notices of candidacy no earlier than noon on the tenth Friday preceding the special election and no later than noon on the seventh Friday preceding the special election.

"Section 3.5. **Other Special Elections and Referenda.** Except as specified above, special elections and referenda may be held only as provided by general law or applicable local acts of the General Assembly.

"ARTICLE 4. ORGANIZATION AND ADMINISTRATION.

"Section 4.1. **Form of Government.** The Town of Rowland shall operate under the Mayor-Council plan as provided by Part 3 of Article 7 of Chapter 160A of the General Statutes.

"Section 4.2. **Town Clerk.** The Board shall appoint a Town Clerk to keep a journal of the proceedings of the Board, to maintain official records and documents, to give notice of meetings, and to perform such other duties as may be prescribed by law or assigned by the Town Board.

"Section 4.3. **Finance Officer.** The Town Board shall appoint a Finance Officer to perform the duties designated in G.S. 159-25 and such other duties as may be prescribed by law or assigned by the Town Board, subject to general law.

"Section 4.4. **Tax Collector.** The Board shall appoint a Tax Collector pursuant to G.S. 105-349 to collect all taxes owed to the Town and to perform such other duties as may be prescribed by law or assigned by the Town Board, subject to general law.

"Section 4.5. **Town Attorney.** The Board of Commissioners shall appoint a Town Attorney who shall be an attorney-at-law licensed to engage in the practice of law in North Carolina and who need not be a resident of the Town during his tenure.

"Section 4.6. **Other Administrative Officers and Employees.** The Board may authorize other positions, subject to the requirements of general law.

"Section 4.7. **Consolidation of Functions.** The Board may consolidate any two or more of the following positions: Clerk, Tax Collector, Finance Officer, and officers and employees authorized under Section 4.6, or may assign the functions of any one or more of these positions to the holder or holders of any other of these positions, subject to the Local Government Budget and Fiscal Control Act.

"Section 4.8. **Bond of Officers.** The Finance Officer, Tax Collector, and all other employees of the Town whose duties require them to handle any funds of the Town, and such other officers and employees of the Town as the Board may by resolution determine, shall give bonds for the faithful performance of their duties. The Town Board shall require by resolution the giving and maintenance of all such bonds in amounts adequate to protect the Town from loss. The premiums on such bonds shall be paid by the Town.

"ARTICLE 5. MISCELLANEOUS.

"Section 5.1. **Town Departments.** The Board of Commissioners may establish such departments to serve the Town as they deem appropriate.

"Section 5.2. **Conflicts of Interest.** Any officer, employee, Commissioner or Mayor who has a financial interest, direct or indirect, in any proposed contract with the Town or in a proposed sale of any land, material, supplies, or services to the Town or to a contractor supplying the Town, shall make known that interest and shall refrain from voting upon or otherwise participating in the making of such a contract or sale. If the Town Board determines that any officer, employee, Commissioner, or Mayor has willfully violated the requirements of this section, that person shall be removed by the Town Board from his office or position. Violation of this section with knowledge, expressed or implied, by the person or corporation contracting with or making a sale to the Town shall render the contract void.

"Section 5.3. **Construction Outside Corporate Limits.** In addition to any authority granted by general law, the Town is authorized to construct or reconstruct water and sewer lines and facilities outside the corporate limits of the Town as the Board may deem appropriate, to furnish water and sewer services to homeowners and industries outside the Town limits, and to make such charges for the services as the Board may deem reasonable.

"Section 5.4. **Severability of Provisions.** If any of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable."

Section 2. The following acts, having served the purposes for which they were enacted or having been consolidated into this act, are expressly repealed:

- Chapter 266, Private Laws of 1889
- Chapter 149, Private Laws of 1909
- Chapter 155, Private Laws of 1909
- Chapter 51, Private Laws, Extra Session of 1913
- Chapter 217, Private Laws of 1915
- Chapter 46, Private Laws, Extra Session of 1920
- Chapter 74, Private Laws, Extra Session of 1920
- Chapter 110, Private Laws of 1925
- Chapter 135, Private Laws of 1933
- Chapter 66, Private Laws of 1935
- Chapter 123, Private Laws of 1935
- Chapter 306, Public-Local Laws of 1937

Chapter 864, Session Laws of 1951

Chapter 867, Session Laws of 1961, except for Section 1.

Section 3. This act does not repeal or affect any rights or obligations, nor any actions or proceedings previously established or currently pending. All existing ordinances, resolutions, and other provisions of the Town of Rowland shall continue in effect until repealed or amended.

Section 4. Whenever a reference is made in this act to a particular provision of the General Statutes, and such provision is later amended, superseded, or remodified, the reference shall be deemed amended to refer to the amended General Statute or to the General Statute which most clearly corresponds to the statutory provision which is superseded or modified. No change in the General Statutes which conflicts with the provisions of this Charter shall supersede any provision of this Charter unless an intention to do so is expressly stated.

Section 5. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 18th day of August, 1998.

Became law on the date it was ratified.

S.B. 1422

SESSION LAW 1998-106

AN ACT TO EXTEND AND IMPROVE THE CABARRUS COUNTY WORK OVER WELFARE PROGRAM.

The General Assembly of North Carolina enacts:

Section 1. Chapter 368 of the 1995 Session Laws, as rewritten by Section 24.16A of Chapter 18 of the 1995 Session Laws, Second Extra Session 1996, reads as rewritten:

"Section 1. Notwithstanding any law to the contrary, the Department of Human Resources Health and Human Services shall designate Cabarrus County as a pilot county for the purpose of conducting a demonstration Workfare Program for certain ~~Aid to Families with Dependent Children (AFDC)~~ Work First and Food Stamp recipients. Immediately upon the ratification of this act, the Department shall seek all federal waivers necessary to allow this demonstration program. To the extent that this act or the program established pursuant to it conflicts with any State law, the program supersedes that law.

Sec. 2. (a) The Cabarrus County demonstration Workfare Program for certain ~~AFDC~~ Work First and Food Stamp recipients shall:

- (1) Provide job opportunities to all able-bodied ~~AFDC~~ Work First and Food Stamp recipients ~~who:~~
 - a. ~~Are not eligible for the JOBS program;~~
 - b. ~~Are between the ages of 18 and 64;~~
 - c. ~~Are not caring for a child under one year of age;~~
 - d. ~~Are working less than 30 hours per week; and~~
 - e. ~~Are not full-time high school students or the equivalent; are required to participate in the Work First employment program.~~

- (2) Create job opportunities in the public, the private, nonprofit, and the private, for-profit sector, primarily in the human services areas by allowing Cabarrus County to use grant diversions, consisting of the ~~AFDC Work First~~ benefits and the cash value of Food Stamps that would be paid to otherwise eligible recipients to match employer funds, to subsidize the employment of these recipients. Human service area jobs will meet such socially necessary needs as day care work, nursing home aide work, and in-home aide work;
- (3) Allow wages paid to these recipients, which contain grant-diverted funds, to be exempt from income for purposes of determining eligibility for assistance;
- (4) Structure payment of wages to these recipients such that they will be considered income, in order to make recipients eligible for the federal earned income tax credit;
- (5) Create work experience opportunities in the private sector more realistically to reflect the world of work;
- (6) Require these recipients to participate in the development of an opportunity contract, outlining the responsibilities of the recipient and agency, as well as the incentives for compliance and the sanctions for noncompliance;
- (7) Require all these recipients who participate in the program to pursue and accept employment, full or part time, subsidized or unsubsidized, as a condition for continued eligibility for ~~AFDC Work First~~ and Food Stamp assistance;
- (8) Require job search training of all participants;
- (9) Require monitored job search of all participants until employment is found or until other work activities of up to 40 hours per week are in place;
- (10) Provide child care by allowing Cabarrus County to use grant diversions, consisting of the ~~Family Support Act~~ child day care subsidies that would be paid to otherwise eligible recipients, and transportation as required;
- (11) Create a positive work incentive by providing wage incentives to participants who are in compliance with the program, equal to the first thirty dollars (\$30.00) and one-third of the remainder of monthly gross income for a period of up to two years;
- (12) Provide enhanced Food Stamp benefits after participants are employed and are in program compliance by using the thirty dollar (\$30.00) and one-third of the remainder wage incentive as an income exemption;
- (13) ~~Provide time limited sanctions, or withholding of benefits for the adult members of the household of all AFDC and Food Stamp benefits for noncompliance, beginning with the first sanction period equal to the time necessary to come into compliance, second sanction period -- four months, third and subsequent sanctions -- eight months; (i) a pay-for performance system that withholds the entire Work First benefits for the household for the month following any month in which it fails to comply with~~

Work First participation requirements and restores these benefits for the month following any month in which it successfully complies with Work First participation requirements, and, to ensure that children in sanctioned households are not harmed, (ii) social worker monitoring and the use of direct vendor payments or assistance from other community resources for rent, utilities, or other basic needs of children, as necessary, during the period in which the household is sanctioned;

- (14) Provide automatic Medicaid coverage for children and pregnant adults of sanctioned families by transferring the children administratively to the Medicaid for Indigent Children (MIC) Program and by transferring the pregnant adults administratively to the Medicaid for Pregnant Women (MPW) Program.

~~(b) An adjunct program to the demonstration program prescribed in subsection (a) of this section shall:~~

- ~~(1) Require AFDC recipients who are mandated JOBS participants to pursue and accept employment, full or part time, subsidized or unsubsidized, as part of their job plan. The maximum number of hours delegated to job activities, including employment, shall be 40 hours per week. AFDC recipients who are JOBS eligible and who are caring for children under five years of age shall, in this program, not be limited to 20 hours per week;~~
- ~~(2) Require AFDC recipients who are potential JOBS participants to engage in job search until either employment is found or they become JOBS eligible; and~~
- ~~(3) Ensure that sanctions for noncompliance and provision of Medicaid coverage shall be as provided in subdivisions (13) and (14) of subsection (a) of this section.~~

Sec. 3. This act shall be funded by Cabarrus County using the grant diversions and administrative transfers prescribed in Section 2 of this act, together with federal and State administrative funding allocated to Cabarrus County for the public assistance ~~and JOBS~~ programs.

Sec. 4. The Department of ~~Human Resources~~ Health and Human Services shall evaluate the Cabarrus County Demonstration Project and report to the General Assembly and to the Joint Legislative Public Assistance Commission on or before ~~May 1, 1998, September 1, 1998.~~

Sec. 5. This act becomes effective July 1, 1995 and shall expire on ~~January 1, 1999, July 1, 2001."~~

Section 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 19th day of August, 1998.

Became law on the date it was ratified.

H.B. 894

SESSION LAW 1998-107

AN ACT TO PROVIDE FOUR-YEAR TERMS FOR THE MAYOR AND COUNCIL OF THE TOWN OF STONEVILLE.

The General Assembly of North Carolina enacts:

Section 1. Section 3 of the Charter of the Town of Stoneville, being Chapter 287 of the 1983 Session Laws, reads as rewritten:

"Sec. 3. Term of Office of Members of Council. Members of the Council are elected to ~~two-year~~ four-year terms. In 1999, the three persons receiving the highest numbers of votes are elected to four-year terms and the two persons receiving the next highest numbers of votes are elected to two-year terms. In 2001 and quadrennially thereafter, two persons are elected to four-year terms. In 2003 and quadrennially thereafter, three persons are elected to four-year terms."

Section 2. Section 4 of the Charter of the Town of Stoneville, being Chapter 287 of the 1983 Session Laws, reads as rewritten:

"Sec. 4. Election of Mayor, Term of Office. The qualified voters of the entire Town elect the Mayor, who shall be elected to a ~~two-year~~ four-year term of office."

Section 3. This act applies beginning with persons elected in 1999.

Section 4. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 19th day of August, 1998.

Became law on the date it was ratified.

H.B. 1546

SESSION LAW 1998-108

AN ACT TO AUTHORIZE CERTAIN MUNICIPALITIES TO CHARGE A FEE NOT TO EXCEED FIVE DOLLARS FOR UNCERTIFIED COPIES OF POLICE INCIDENT OR ACCIDENT REPORTS AND TO AUTHORIZE THE CITY TO GIVE ANNUAL NOTICE OF VIOLATION TO CHRONIC VIOLATORS OF THE CITY'S OVERGROWN VEGETATION ORDINANCE.

The General Assembly of North Carolina enacts:

Section 1. A municipality may charge a fee not to exceed five dollars (\$5.00) for an uncertified copy of a police incident or accident report, except that the operator of a vehicle involved in an accident shall be entitled to one free copy of an uncertified copy. The fees collected shall be used for law enforcement purposes only.

Section 2. A municipality may notify a chronic violator of the municipality's overgrown vegetation ordinance that, if the violator's property is found to be in violation of the ordinance, the municipality shall, without further notice in the calendar year in which notice is given, take action to remedy the violation and the expense of the action shall become a lien upon the property and shall be collected as unpaid taxes. The notice shall be served by registered or certified mail. A chronic violator is a person who owns property whereupon, in the previous calendar year, the municipality took remedial action at least three times under the overgrown vegetation ordinance.

Section 3. This act applies to the Towns of Denton and Farmville and the City of Greenville only.

Section 4. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 19th day of August, 1998.

Became law on the date it was ratified.

H.B. 1625

SESSION LAW 1998-109

AN ACT TO PROVIDE THAT THE CHAIR OF THE HALIFAX TOURISM DEVELOPMENT AUTHORITY SHALL BE ELECTED BY THE MEMBERS OF THE AUTHORITY.

The General Assembly of North Carolina enacts:

Section 1. Section 2 of Chapter 377 of the 1987 Session Laws reads as rewritten:

"Sec. 2. Tourism Development Authority. (a) Appointment and membership. When the Board of Commissioners adopts a resolution levying a room occupancy tax under this act, it shall also adopt a resolution creating a county Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The resolution shall provide for the membership of the Authority including the members' qualifications and terms of office, and for the filling of vacancies on the Authority. The resolution shall provide that the chair of the Authority shall be elected by majority vote of the members of the Authority. The Board of Commissioners shall ~~designate one member of the Authority as chair and shall~~ determine the compensation, if any, to be paid to members of the Authority.

The Authority shall meet at the call of the chair and shall adopt rules of procedure to govern its meetings. The Finance Officer for Halifax County shall be the ex officio finance officer of the Authority.

(b) Duties. The Authority shall promote travel, tourism, and conventions in the county, sponsor tourist-related events and activities in the county, and finance tourist-related capital projects in the county.

(c) Reports. The Authority shall report quarterly and at the close of the fiscal year to the Board of County Commissioners on its receipts and expenditures for the preceding quarter and for the year in such detail as the Board may require."

Section 2. This act is effective January 1, 1998 and applies to terms of office beginning on or after that date.

In the General Assembly read three times and ratified this the 19th day of August, 1998.

Became law on the date it was ratified.

H.B. 1591

SESSION LAW 1998-110

AN ACT REQUIRING THE CONSENT OF CARTERET, CHATHAM, JONES, AND ORANGE COUNTIES BEFORE LAND IN THOSE COUNTIES MAY BE CONDEMNED OR ACQUIRED BY A UNIT OF LOCAL GOVERNMENT OUTSIDE THOSE COUNTIES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 153A-15(c) reads as rewritten:

"(c) This section applies to Alamance, Alleghany, Anson, Ashe, Bertie, Bladen, Brunswick, Burke, Buncombe, Cabarrus, Caldwell, Camden, Carteret, Caswell, Catawba, Chatham, Cherokee, Clay, Cleveland, Columbus, Craven, Cumberland, Currituck, Davidson, Davie, Duplin, Durham, Edgecombe, Forsyth, Franklin, Gaston, Graham, Granville, Greene, Guilford, Halifax, Harnett, Haywood, Henderson, Hoke, Iredell, Jackson, Johnston, Jones, Lee, Lincoln, Macon, Madison, Martin, McDowell, Mecklenburg, Montgomery, Nash, New Hanover, Onslow, Orange, Pamlico, Pasquotank, Pender, Perquimans, Person, Pitt, Polk, Richmond, Robeson, Rockingham, Rowan, Sampson, Scotland, Stanly, Stokes, Surry, Swain, Transylvania, Union, Vance, Wake, Warren, Watauga, Wilkes, and Yancey counties only. This section does not apply as to any:

- (1) Condemnation; or
- (2) Acquisition of real property or an interest in real property by a city where the property to be condemned or acquired is within the corporate limits of that city."

Section 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 11th day of August, 1998.

Became law upon approval of the Governor at 10:58 a.m. on the 20th day of August, 1998.

H.B. 1369

SESSION LAW 1998-111

AN ACT TO CLARIFY COMMUNITY COLLEGES' AUTHORITY TO ENTER INTO LEASE PURCHASE AND INSTALLMENT PURCHASE CONTRACTS FOR EQUIPMENT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 115D-20 is amended by adding a new subdivision to read:

- "(11) To enter into lease purchase and installment purchase contracts for equipment under G.S. 115D-58.15."

Section 2. Article 4A of Chapter 115D of the General Statutes is amended by adding a new section to read:

"§ 115D-58.15. Lease purchase and installment purchase contracts for equipment.

(a) Authority. -- The board of trustees of a community college may use lease purchase or installment purchase contracts to purchase or finance the purchase of equipment as provided in this section.

(b) Contract Approval. -- Contracts for more than one hundred thousand dollars (\$100,000) or for a term of more than three years shall be subject to review and approval as provided in this subsection. If the source of funds for payment of the obligation by the community college is intended to be local funds, the contract must be approved by resolution of the tax-levying authority, and the authority must acknowledge in writing its understanding that the community college may require appropriations from the tax-levying

authority in order to meet the college's obligations under the contract. The tax-levying authority may in each fiscal year appropriate sufficient funds to meet the amounts to be paid during the fiscal year under the contract. If the source of funds for payment of the obligation by the community college is intended to be State funds, the contract must be approved by resolution of the State Board of Community Colleges. The State Board may in each fiscal year allocate sufficient funds to meet the amounts to be paid during the fiscal year under the contract.

(c) Local Government Commission. -- A contract that is subject to approval by the tax-levying authority also shall be subject to approval by the Local Government Commission as provided in Article 8 of Chapter 159 of the General Statutes if the contract:

- (1) Extends for five or more years from the date of the contract;
- (2) Obligates the board of trustees to pay sums of money to another, regardless of whether the payee is a party to the contract; and
- (3) Obligates the board of trustees to pay five hundred thousand dollars (\$500,000) or more over the full term of the contract.

(d) Application of Section. -- When determining whether a contract is subject to approval under this section the total cost of exercising an option to upgrade property shall be taken into consideration. The term of a contract shall include periods that may be added to the original term through the exercise of an option to renew or extend.

(e) Nonsubstitution Clause. -- No contract entered into under this section may contain a nonsubstitution clause that restricts the right of a board of trustees to:

- (1) Continue to provide a service or activity; or
- (2) Replace or provide a substitute for any property financed or purchased by the contract.

(f) Nonappropriations Clause. -- No deficiency judgment may be rendered against any board of trustees, any tax-levying authority, the State Board of Community Colleges, or the State of North Carolina in any action for breach of a contractual obligation authorized by this section. The taxing power of a tax-levying authority and the State is not and may not be pledged directly or indirectly to secure any moneys due under a contract authorized by this section."

Section 3. G.S. 115D-5 is amended by adding a new subsection to read:

"(1) The State Board shall review and approve lease purchase and installment purchase contracts as provided under G.S. 115D-58.15(b). The State Board shall adopt policies and procedures governing the review and approval process."

Section 4. This act is effective when it becomes law and applies to contracts entered into on or after that date.

In the General Assembly read three times and ratified this the 10th day of August, 1998.

Became law upon approval of the Governor at 11:00 a.m. on the 20th day of August, 1998.

AN ACT TO AUTHORIZE THE TOWN OF ST. PAULS TO LEVY A ROOM OCCUPANCY AND TOURISM DEVELOPMENT TAX AND TO AUTHORIZE THE CITY OF STATESVILLE TO LEVY AN ADDITIONAL ROOM OCCUPANCY TAX TO FUND TOURISM PROMOTION AND OPERATING EXPENSES OF A CIVIC CENTER.

The General Assembly of North Carolina enacts:

Section 1. St. Pauls occupancy tax. (a) Authorization and scope. The board of commissioners of the Town of St. Pauls may levy a room occupancy tax of up to one percent (1%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the town that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations when furnished in furtherance of their nonprofit purpose.

(b) Administration. A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 160A-215. The penalties provided in G.S. 160A-215 apply to a tax levied under this section.

(c) Distribution and use of tax revenue. The Town of St. Pauls shall, on a quarterly basis, remit the net proceeds of the occupancy tax to the St. Pauls Tourism Development Authority. The Authority shall use at least two-thirds of the funds remitted to it under this subsection to promote travel and tourism in St. Pauls and shall use the remainder for tourism-related expenditures.

The following definitions apply in this subsection:

- (1) Net proceeds. -- Gross proceeds less the cost to the town of administering and collecting the tax, as determined by the finance officer, not to exceed one percent (1%) of gross receipts collected each year.
- (2) Promote travel and tourism. -- To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area; the term includes administrative expenses incurred in engaging in the listed activities.
- (3) Tourism-related expenditures. -- Expenditures that, in the judgment of the Tourism Development Authority are designed to increase the use of lodging facilities, meeting facilities, or convention facilities in a town or to attract tourists or business travelers to the town. The term includes tourism-related capital expenditures.

Section 2. St. Pauls Tourism Development Authority. (a) Appointment and membership. When the board of commissioners of the Town of St. Pauls adopts a resolution levying a room occupancy tax under this act, it shall also adopt a resolution creating a town Tourism Development Authority, which shall be a public authority under the Local

Government Budget and Fiscal Control Act. The resolution shall provide for the membership of the Authority, including the members' terms of office, and for the filling of vacancies on the Authority. At least one-third of the members must be individuals who are affiliated with businesses that collect the tax in the town and at least three-fourths of the members must be individuals who are currently active in the promotion of travel and tourism in the town. The board of commissioners shall designate one member of the Authority as chair and shall determine the compensation, if any, to be paid to members of the Authority.

The Authority shall meet at the call of the chair and shall adopt rules of procedure to govern its meetings. The Finance Officer for the Town of St. Pauls shall be the ex officio finance officer of the Authority.

(b) Duties. The Authority shall expend the net proceeds of the tax levied under this act for the purposes provided in Section 1 of this act. The Authority shall promote travel, tourism, and conventions in the town, sponsor tourist-related events and activities in the town, and finance tourist-related capital projects in the town.

(c) Reports. The Authority shall report quarterly and at the close of the fiscal year to the board of commissioners on its receipts and expenditures for the preceding quarter and for the year in such detail as the board of commissioners may require.

Section 3. Part V of Chapter 570 of the 1985 Session Laws, as amended by Chapter 930 of the 1985 Session Laws, reads as rewritten:

"Part V. Statesville Occupancy Tax.

Sec. 16. Authorization and Scope. -- The city council of the City of Statesville may, if the Board of Commissioners of Iredell County has adopted a resolution under Section 15 of this act, ~~by resolution~~ levy a tax ~~on of up to~~ three percent (3%) of the gross receipts from the rental of accommodations within the corporate limits of the city, not to exceed three percent (3%), city that are subject to the sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax applies to the rental of accommodations subject to sales tax under G.S. 105-164.4(3).

Sec. 16.1. Additional Tax. -- In addition to the tax authorized by Section 16 of this Part, the city council of the City of Statesville may levy an additional room occupancy tax of up to two percent (2%) of the gross receipts derived from the rental of accommodations taxable under Section 16. The levy, collection, administration, and repeal of the tax authorized by this section shall be in accordance with the provisions of this Part. The City of Statesville may not levy a tax under this section unless it also levies the tax authorized under Section 16 of this Part.

Sec. 17. Definition of Collector. -- As used in this Part, 'collector' means the Iredell County Tax Collector if the City of Statesville and Iredell County have so provided by contract, otherwise it means the city finance officer and/or city clerk, as may be designated by resolution of the city council.

Sec. 18. Collector to Collect Tax. -- The collector shall collect and administer the occupancy tax levied by the city pursuant to this Part. The city council may adopt rules as needed by the collector to implement this Part.

Sec. 19. Administration. -- A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 160A-215. The penalties provided in G.S. 160A-215 apply to a tax levied under this section. Every owner of a business subject to the tax levied by this Part shall, on and after the first day of the calendar month set by the governing body in the resolution levying the tax, collect the occupancy tax provided by this Part. This tax shall be collected as part of the charge for the furnishing of any taxable accommodations. The tax shall be stated and charged separately from the sales records, and shall be paid by the purchaser to the owner of the business as trustee for and on account of the city. The occupancy tax levied under this Part shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the owner of the business. The city tax collector shall design, print, and furnish to all appropriate businesses in the city the necessary forms for filing returns and instructions to ensure the full collection of the tax. Every person liable for the tax imposed pursuant to this Part shall, on or before the 15th day of each month, prepare and submit a return on the prescribed form stating the total gross receipts derived during the preceding month from rentals upon which the tax is levied. The tax shall be due and payable to the tax collector on a monthly basis.

Any person who fails or refuses to file the return required by this Part shall pay a penalty of ten dollars (\$10.00) for each day's omission. In addition, any person who refuses to file the return or pay the tax for a period of 30 days after the time required for filing the return or for paying the tax shall pay a penalty of five percent (5%) of the tax due. An additional penalty of five percent (5%) shall be imposed for each additional month or fraction thereof in which the occupancy tax is not paid.

Any person who willfully attempts in any manner to evade the occupancy tax or who willfully fails to pay the tax or make and file the required return, shall, in addition to all other penalties provided by law, be guilty of a misdemeanor and be punishable by a fine not to exceed one thousand dollars (\$1,000), imprisonment not to exceed six months, or both.

Sec. 20. Use of Proceeds. -- The collector shall remit the proceeds of this tax the taxes levied under this Part to the city on a monthly basis. The city shall allocate the net proceeds of the three percent (3%) tax levied under Section 16. The funds received by the city pursuant to this Part shall be allocated to a special fund and used only use them only for operation, construction, operation, and maintenance of a civic center, for payment of interest or retiring principal on debt related to a civic center, or for promotion of travel and tourism. The city shall remit one-half of the net proceeds of the two percent (2%) tax levied under Section 16.1 to the Statesville Tourism Development Authority to be used to promote travel and tourism in the City of Statesville. The city shall use the remaining net proceeds of the two percent (2%) tax levied under Section 16.1 for operation and maintenance of a civic center and for payment of interest or retiring principal on debt related to a civic center.

The following definitions apply in this section:

- (1) Net proceeds. -- Gross proceeds less the cost to the city of administering and collecting the tax, as determined by the finance

officer, not to exceed three percent (3%) of the first five hundred thousand dollars (\$500,000) of gross proceeds collected each year and one percent (1%) of the remaining gross receipts collected each year.

- (2) Promote travel and tourism. -- To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area; the term includes administrative expenses incurred in engaging in the listed activities.

Sec. 21. Collection Powers. -- The collector may collect any unpaid taxes levied under this Part through the use of attachment and garnishment proceedings as provided in G.S. 105-368 for collection of property taxes. The collector has the same enforcement powers concerning the tax imposed under this Part as does the Secretary of Revenue in enforcing the State sales tax under G.S. 105-164.30.

~~Sec. 22. The city council may by resolution repeal the levy of the occupancy tax authorized by this Part. No liability for any tax levied under this Part that attached prior to the date on which a levy is repealed is discharged by the repeal, and no right to a refund of a tax that accrued prior to the effective date on which a levy is repealed shall be denied as a result of the repeal.~~

~~Sec. 23. The definitions set forth in G.S. 105-164.3 apply to this Part insofar as those definitions are not inconsistent with this Part.~~

Sec. 24. Civic Center Authority. -- Before levying a tax under Section 16 of this Part, the City of Statesville shall either establish a civic center authority, adopt a resolution that the city intends to pursue and develop goals involving a civic center and travel and tourism in the City of Statesville, or by resolution provide that a civic center shall be administered as or by a department of the city. If an authority is established, it shall have the number of members set forth in the resolution establishing it, which members shall be appointed by the Mayor. The city council may grant to the Authority any or all of the powers provided by Section 3 of Chapter 329, Session Laws of 1971.

Sec. 24.1. Statesville Tourism Development Authority. -- (a) Appointment and Membership. When the Statesville City Council adopts a resolution levying a room occupancy tax under Section 16.1 of this Part, it shall also adopt a resolution creating a city Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The resolution shall provide for the membership of the Authority, including the members' terms of office, and for the filling of vacancies on the Authority. At least one-third of the members must be individuals who are affiliated with businesses that collect the tax in the city and at least three-fourths of the members must be individuals who are currently active in the promotion of travel and tourism in the city. The Statesville City Council shall designate one member of the Authority as chair and shall determine the compensation, if any, to be paid to members of the Authority.

The Authority shall meet at the call of the chair and shall adopt rules of procedure to govern its meetings. The Finance Officer for the City of Statesville shall be the ex officio finance officer of the Authority.

(b) Duties. The Authority shall expend the funds remitted to it under this Part for the purposes provided in Section 20 of this Part. The Authority shall promote travel, tourism, and conventions in the city and sponsor tourist-related events and activities in the city.

(c) Budget; Reports. The Authority may not expend any funds except pursuant to a budget that has been approved by the Statesville City Council. The Authority shall submit its proposed budgets to the Statesville City Council for review and shall report quarterly and at the close of the fiscal year to the Statesville City Council on its receipts and expenditures for the preceding quarter and for the year in such detail as the city council may require."

Section 4. City administrative provisions. -- Section 3 of S.L. 1997-410, as amended by Section 2 of S.L. 1997-447, reads as rewritten:

"Section 3. Municipal Administrative Provisions. G.S. 160A-215, as enacted by S.L. 1997-361 and S.L. 1997-364, applies to the Cities of Goldsboro, Lumberton, Mount Airy, ~~and~~ Shelby, and Statesville, to the Town of St. Pauls and to the municipalities in Brunswick County."

Section 5. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 20th day of August, 1998.

Became law on the date it was ratified.

H.B. 72

SESSION LAW 1998-113

AN ACT TO INCORPORATE THE TOWN OF OAK RIDGE, SUBJECT TO A REFERENDUM.

The General Assembly of North Carolina enacts:

Section 1. A charter is enacted for the Town of Oak Ridge to read:

"CHARTER OF THE TOWN OF OAK RIDGE.

"CHAPTER 1.

"INCORPORATION AND CORPORATE POWERS.

"Section 1.1. The inhabitants of the Town of Oak Ridge are a body corporate and politic under the name 'Town of Oak Ridge'. Under that name they have all the rights, powers, duties, privileges and immunities conferred and imposed upon cities by the general law of North Carolina.

"Section 1.2. (a) Article 4A of Chapter 160A of the General Statutes does not apply to the Town of Oak Ridge until July 1, 2018.

(b) G.S. 160A-58.1(b)(2) does not apply to (i) the City of Greensboro as it relates to the Town of Oak Ridge or (ii) the Town of Kernersville as it relates to the Town of Oak Ridge.

"CHAPTER 2.

"CORPORATE BOUNDARIES.

"Section 2.1. Until changed in accordance with law, the boundaries of the Town of Oak Ridge are as follows:

From the southwestern boundary of the Stokesdale City Limits, south on the east side of the Haw River Road to Pepper Road, south on the east side of Pepper Road to NC Hwy. 150, east on the north side of N.C. Highway 150 to Beeson Road, south on the east side of Beeson Road to the centerline of Reedy Fork Creek, thence in a generally northeasterly direction along the centerline of Reedy Fork Creek to the Eastern Right-of-Way line of North Carolina Highway 68, thence south along the eastern right-of-way line of North Carolina Highway 68 approximately 3,900 feet to the southern line of the subdivision containing Riding Trail Court, recorded in Plat Book 61, page 146 in the office of the Register of Deeds of Guilford County, thence east along the southern boundary of that subdivision and of Golden Acres subdivision, Phase 2, Section 2, recorded in Plat Book 99, page 98, Guilford County Register of Deeds, approximately 2,400 feet to the proposed western right-of-way line of the US220-NC68 connector as shown on Map No. 4 of the Roadway Corridor Official Maps (State Project 6.499002T (R-2413)) as recorded in the office of the Register of Deeds of Guilford County approximately 4,200 feet to the southern right-of-way line of Alcorn Road as proposed on Map No. 5 of said maps, thence west along the southern proposed right-of-way line and the present southern right-of-way line of Alcorn Road approximately 4,000 feet to the centerline of Reedy Fork Creek, thence northern along Reedy Fork Creek to the Oak Ridge-Bruce Township line, thence north along the Oak Ridge-Bruce Township line to the southern right-of-way line of North Carolina Highway 150, thence southwest along the southern right-of-way line of North Carolina Highway 150 to a point due south of the western right-of-way line of Eversfield Road, thence across North Carolina Highway 150 in a direct line to the closest point of the western right-of-way line of Eversfield Road, thence north along the western right-of-way line of Eversfield Road to its intersection with the Stokesdale City limits, thence west along the Stokesdale City limit, following the Stokesdale City limit to the point and place of beginning.

"CHAPTER 3.

"GOVERNING BODY.

"Section 3.1. The governing body of the Town of Oak Ridge is the Town Council, which has five members.

"Section 3.2. The qualified voters of the entire Town elect the members of the Town Council.

"Section 3.3. From the effective date of this charter until the organizational meeting of the Town Council after the 1999 municipal elections the Mayor, Mayor Pro Tem, and the other three members of Town Council will be:

Interim Mayor
Mayor Pro Tem

Bill Parrish
Gary Blackburn

Council Mack Peoples
Council Greg Bissett
Council Roger Howerton

The Interim Mayor and Mayor Pro Tem named by this section shall only serve as such if another council member is not chosen for that position as provided by Section 3.5 of this Charter.

"Section 3.4. At the regular Town election in 1999, five council members shall be elected. The persons receiving the three highest numbers of votes shall be elected for four-year terms, and the two persons receiving the next highest numbers of votes shall be elected for two-year terms. In 2001 and quadrennially thereafter, two council members shall be elected for four-year terms. In 2003 and quadrennially thereafter, three council members shall be elected for four-year terms.

"Section 3.5. At the organizational meeting of the initial council and at the organizational meeting after each election, the council shall elect one of its members to serve at its pleasure as Mayor.

"CHAPTER 4.

"ELECTIONS.

"Section 4.1. The Town Council shall be elected by the nonpartisan plurality method as provided by G.S. 163-292. Elections shall be governed by general law except as provided otherwise by this Charter.

"CHAPTER 5.

"ADMINISTRATION.

"Section 5.1. The Town of Oak Ridge shall operate under the Mayor-Council plan as provided in Part 3 of Article 7 of Chapter 160A of the General Statutes.

"CHAPTER 6.

"TAXATION.

"Section 6.1. Notwithstanding G.S. 160A-209(d), except with the approval of the qualified voters of the Town in a referendum under G.S. 160A-209, the Town may not levy ad valorem taxes in excess of twenty cents (20¢) on the one hundred dollars (\$100.00) valuation. This section does not limit taxation to pay the debt service on general obligation indebtedness incurred by the Town in accordance with law."

Section 2. From and after the effective date of the incorporation, the citizens and property in the Town of Oak Ridge shall be subject to municipal taxes levied for the year beginning July 1, 1998, and for that purpose the Town shall obtain from Guilford County a record of property in the area herein incorporate which was listed for taxes as of January 1, 1998, and the businesses in the Town shall be liable for privilege license tax from the effective date of the privilege license tax ordinance. The Town may adopt a budget ordinance for fiscal year 1998-99, without following the timetable in the local government budget and fiscal control act, but shall follow the sequence of actions in the spirit of the act insofar as is practical. For fiscal year 1997-98 ad valorem taxes may be paid at par or face amount within 90 days of adoption of the budget ordinance, and thereafter in accordance with the schedule in G.S. 105-36 as if taxes had been due and payable on September 1, 1998.

Section 3. (a) The Guilford County Board of Elections, shall conduct an election on the Tuesday after the first Monday in November of 1998 for the purpose of submission of the proposed Charter to the qualified voters of the area described in Section 2.1 of the Charter of the Town of Oak Ridge. Registration for the election shall be conducted in accordance with G.S. 163-288.2.

(b) In the election, the question on the ballot shall be:

"[] FOR [] AGAINST

Incorporation of the Town of Oak Ridge".

Section 4. In such election if a majority of the votes cast are not cast "For incorporation of the Town of Oak Ridge", then Sections 1 and 2 of this act shall have no force or effect.

Section 5. In such election, if a majority of the votes cast shall be cast "For incorporation of the Town of Oak Ridge", then Sections 1 and 2 of this act shall become effective on the date that the Guilford County Board of Elections determines the result of the election.

Section 6. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 20th day of August, 1998.

Became law on the date it was ratified.

S.B. 1351

SESSION LAW 1998-114

AN ACT AUTHORIZING THE DELETION OF LAND AT WAYNESBOROUGH STATE PARK FROM THE STATE PARKS SYSTEM AND ITS SALE TO THE CITY OF GOLDSBORO.

The General Assembly of North Carolina enacts:

Section 1. The General Assembly authorizes the deletion of the following land from the State Parks System, pursuant to G.S. 113-44.14:

The 12.08 acre tract of land at Waynesborough State Park in Goldsboro Township, Wayne County, shown on a survey titled "Survey for Waynesboro Park Commission" by Alonzo E. Little, Registered Land Surveyor, dated January 13, 1998 and recorded in Plat Cabinet K, Slide 95B, Wayne County Registry.

Section 2. The State of North Carolina shall convey to the City of Goldsboro the property identified in Section 1 of this act for consideration of three hundred dollars (\$300.00).

Section 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 13th day of August, 1998.

Became law upon approval of the Governor at 11:20 a.m. on the 24th day of August, 1998.

S.B. 1273

SESSION LAW 1998-115

AN ACT TO CONFORM TO GENERAL LAW THE MANNER OF APPOINTMENT OF THE TOWN ATTORNEY OF KERNERSVILLE.

The General Assembly of North Carolina enacts:

Section 1. Section 14 of the Charter of the Town of Kernersville, being Chapter 381 of the Session Laws of 1989, reads as rewritten:

"Sec. 14. **Town Attorney.** The Board of Aldermen ~~at their first meeting after each election,~~ shall appoint a Town Attorney who shall be an Attorney at Law licensed to practice in the State of North Carolina and who need not be a resident of the Town of Kernersville at the time of his appointment or

thereafter. The Town Attorney shall be the chief legal advisor of and Attorney for the Town and he shall perform such duties as are imposed upon the chief legal officers of municipalities by law and perform such other duties of a legal nature as the Board of Aldermen may require. He shall receive such compensation as the Board of Aldermen may from time to time determine."

Section 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 25th day of August, 1998.

Became law on the date it was ratified.

H.B. 1075

SESSION LAW 1998-116

AN ACT TO PERMIT LENDERS TO CONTRACT FOR AND RECEIVE SHARED APPRECIATION OR SHARED VALUE IN CERTAIN CIRCUMSTANCES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 53-270 reads as rewritten:

"§ 53-270. *Prohibited acts.*

Reverse mortgage lenders are prohibited from engaging in any of the following acts in connection with the making, servicing, or collecting of a reverse mortgage loan:

- (1) Misrepresenting material facts, making false promises, or engaging in a course of misrepresentation through agents or otherwise.
- (2) Failing to disburse funds in accordance with the terms of the reverse mortgage loan contract or other written commitment.
- (3) Improperly refusing to issue a satisfaction of a mortgage.
- (4) Engaging in any action or practice that is unfair or deceptive, or that operates a fraud on any person.
- (5) Contracting for or receiving shared ~~appreciation~~, appreciation or shared value, except as provided in G.S. 53-270.1.
- (6) Closing a reverse mortgage loan without receiving certification from a ~~counselor~~ person who is certified as a reverse mortgage counselor by the State that the borrower has received counseling on the advisability of a reverse mortgage loan and the appropriate various types of reverse mortgage loan for the borrower, loans and the availability of other financial options and resources for the borrower, as well as potential tax consequences.
- (7) Failing to comply with this Article."

Section 2. Article 21 of Chapter 53 of the General Statutes is amended by adding a new section to read:

"§ 53-270.1. *Contracts for shared appreciation or shared value.*

(a) A lender and a borrower may agree, in writing, that in addition to the principal and any interest accruing on the outstanding balance of a reverse mortgage loan, the lender may receive:

- (1) Shared appreciation if it is in an amount not exceeding ten percent (10%) of the increase in the value of the property from the date of

origination of the reverse mortgage loan to the date of loan repayment; or

(2) Shared value if it is in an amount not exceeding ten percent (10%) of the value of the property at the time of repayment of the reverse mortgage loan; and

(3) The shared appreciation or shared value is paid in conjunction with a loan that:

a. Is outstanding for 24 months or longer; and

b. Either (i) is guaranteed or insured by an agency of the federal government, or (ii) has been originated under a reverse mortgage program approved by the Federal National Mortgage Association, the Government National Mortgage Association, or the Federal Home Loan Mortgage Corporation, provided the loan is sold to one of those agencies or enterprises within 90 days of loan closing, or (iii) has been originated under a reverse mortgage program of a person, firm, or corporation approved as an authorized lender by the Commissioner; and

c. Provides that the borrower receives additional economic benefit in exchange for paying the shared appreciation or shared value, including, but not limited to, larger monthly payments or a larger line of credit. The specific nature of the economic benefit shall be provided to the Commissioner with the other information about the reverse mortgage program required under G.S. 53-264 for dissemination to the reverse mortgage counselors; and

d. At least 14 days prior to closing, the borrower receives a disclosure that explains the additional costs and benefits of shared appreciation or shared value and compares those costs and benefits with a comparable loan without shared appreciation or shared value. These costs and benefits shall also be included in the information required under G.S. 53-264.

(b) Under subdivisions (a)(1) and (2) of this section, in determining the value of the property at the time of origination of the reverse mortgage loan and at the time of repayment, if repayment is not in conjunction with the sale of the property, the lender and the borrower shall have the right to obtain an appraisal from an appraiser licensed or certified in accordance with G.S. 93E-1-6. If the appraisals differ, and the parties cannot agree on a value, an average of the appraisals shall determine the value. If the borrower does not desire an appraisal, the lender may obtain an appraisal, which shall be controlling. Notwithstanding the foregoing, the parties may agree in writing to waive these requirements and agree upon the value of the property.

(c) If repayment is made in conjunction with the sale of the property, the actual and reasonable costs of sale shall be deducted from the value of the property prior to the calculation of the amount of shared appreciation or shared value."

Section 3. G.S. 53-257(7) reads as rewritten:

"(7) Shared appreciation. -- An agreement by the lender and the borrower that, in addition to the principal and any interest accruing on the outstanding balance of a reverse mortgage loan, the lender may collect an additional amount equal to a percentage of ~~any net appreciated value of the property during the term of the reverse mortgage loan,~~ the increase in the value of the property from the date of origination of the loan to the date of loan repayment.

(7a) Shared value. -- An agreement by the lender and the borrower that, in addition to the principal and any interest accruing on the outstanding balance of a reverse mortgage loan, the lender may collect an additional amount equal to a percentage of the value of the property at the time of loan repayment."

Section 4. G.S. 53-264(a) is amended by adding a new subdivision to read:

"(8) Information relating to contracts for shared appreciation or shared value, as required by G.S. 53-270.1."

Section 5. This act becomes effective October 1, 1998, and applies to contracts for loans entered into on or after that date.

In the General Assembly read three times and ratified this the 19th day of August, 1998.

Became law upon approval of the Governor at 12:50 p.m. on the 27th day of August, 1998.

S.B. 245

SESSION LAW 1998-117

AN ACT TO AUTHORIZE METROPOLITAN SEWERAGE DISTRICTS AND CERTAIN SANITARY DISTRICTS TO USE INSTALLMENT PURCHASE FINANCING TO THE SAME EXTENT AS OTHER UNITS OF LOCAL GOVERNMENT AND TO REMOVE THE POPULATION REQUIREMENT FOR LOCAL SCHOOL ADMINISTRATIVE UNITS TO USE INSTALLMENT PURCHASE FINANCING.

The General Assembly of North Carolina enacts:

Section 1. G.S. 160A-20(h) reads as rewritten:

"(h) As used in this section, the term 'unit of local government' means any of the following:

- (1) A county.
- (2) A city.
- (3) A water and sewer authority created under Article 1 of Chapter 162A of the General Statutes.
- (3a) A metropolitan sewerage district created under Article 5 of Chapter 162A of the General Statutes.
- (3b) A sanitary district created under Part 2 of Article 2 of Chapter 130A of the General Statutes.
- (4) An airport authority whose situs is entirely within a county that has (i) a population of over 120,000 according to the most recent

federal decennial census and (ii) an area of less than 200 square miles.

- (5) An airport authority in a county in which there are two incorporated municipalities with a population of more than 65,000 according to the most recent federal decennial census.
- (5a) An airport board or commission authorized by agreement between two cities pursuant to G.S. 63-56, one of which is located partially but not wholly in the county in which the jointly owned airport is located, and where the board or commission provided water and wastewater services off the airport premises before January 1, 1995; provided that the authority granted by this section may be exercised by such a board or commission with respect to water and wastewater systems or improvements only.
- (6) A local school administrative unit ~~(i) that is located in a county that has a population of over 90,000 according to the most recent federal decennial census and~~ (ii) whose board of education is authorized to levy a school tax.
- (7) An area mental health, developmental disabilities, and substance abuse authority, acting in accordance with G.S. 122C-147.
- (8) A consolidated city-county, as defined by G.S. 160B-2(1)."

Section 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 19th day of August, 1998.

Became law upon approval of the Governor at 12:52 p.m. on the 27th day of August, 1998.

H.B. 794

SESSION LAW 1998-118

AN ACT TO MAKE SUBSTANTIVE CHANGES TO THE NORTH CAROLINA ENGINEERING AND LAND SURVEYING ACT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 89C-2 reads as rewritten:

"§ 89C-2. *Declarations; prohibitions.*

In order to safeguard life, health, and property, and to promote the public welfare, the practice of engineering and the practice of land surveying in this State are hereby declared to be subject to regulation in the public interest. It shall be unlawful for any person to practice or to offer to practice engineering or land surveying in this State, as defined in the provisions of this Chapter, or to use in connection with his the person's name or otherwise assume or advertise any title or description tending to convey the impression that he the person is either a professional engineer or a registered professional land surveyor, unless such the person has been duly registered as such licensed. The right to engage in the practice of engineering or land surveying shall be deemed is a personal right, based on the qualifications of the individual person as evidenced by his the person's certificate of registration, licensure, which shall not be transferable."

Section 2. G.S. 89C-3 reads as rewritten:

"§ 89C-3. *Definitions.*

The following definitions apply in this Chapter:

- (1) Board. -- The North Carolina State Board of ~~Registration~~ Examiners for Professional Engineers and Land Surveyors provided for by this Chapter.
- (1a) Business firm. -- A partnership, firm, association, or another organization or group that is not a corporation and is acting as a unit.
- (2) Engineer. -- A person who, by reason of ~~his~~ special knowledge and use of the mathematical, physical and engineering sciences and the principles and methods of engineering analysis and design, acquired by engineering education and engineering experience, is qualified to practice engineering.
- (3) ~~Engineer-in-training.~~ Engineering intern. -- A person who complies with the requirements for education, experience and character, and has passed an examination in the fundamental engineering subjects, as provided in this Chapter.
- (3a) Inactive licensee. -- Licensees who are not engaged in the practice of engineering or land surveying in this State.
- (4) ~~Land surveyor-in-training.~~ Land surveyor intern. -- A person who has qualified for, taken, and passed an examination on the basic disciplines of land surveying as provided in this Chapter.
- (5) Person. -- Any natural person, firm, partnership, corporation or other legal entity.
- (6) Practice of engineering. --
 - a. Any service or creative work, the adequate performance of which requires engineering education, training, and experience, in the application of special knowledge of the mathematical, physical, and engineering sciences to such services or creative work as consultation, investigation, evaluation, planning, and design of engineering works and systems, planning the use of land and water, engineering surveys, and the observation of construction for the purposes of assuring compliance with drawings and specifications, including the consultation, investigation, evaluation, planning, and design for either private or public use, in connection with any utilities, structures, buildings, machines, equipment, processes, work systems, projects, and industrial or consumer products or equipment of a mechanical, electrical, hydraulic, pneumatic or thermal nature, insofar as they involve safeguarding life, health or property, and including such other professional services as may be necessary to the planning, progress and completion of any engineering services.

A person shall be construed to practice or offer to practice engineering, within the meaning and intent of this Chapter, who practices any branch of the profession of engineering; or who, by verbal claim, sign, advertisement, letterhead, card, or in any other way represents himself the person to be a professional engineer, or through the use of some other title

implies that ~~he the person~~ is a professional engineer or that ~~he the person is registered~~ licensed under this Chapter; or who holds ~~himself the person~~ out as able to perform, or who does perform any engineering service or work not exempted by this Chapter, or any other service designated by the practitioner which is recognized as engineering.

- b. The term 'practice of engineering' shall not be construed to permit the location, description, establishment or reestablishment of property lines or descriptions of land boundaries for conveyance. The term does not include the assessment of an underground storage tank required by applicable rules at closure or change in service unless there has been a discharge or release of the product from the tank.

(7) ~~Practice of land surveying by registered land surveyors.~~
surveying. --

- a. ~~Any service or work, the adequate performance of which involves the application of special knowledge of the principles of mathematics, the related physical and applied sciences, and the relevant requirements of law for adequate evidence to the act of measuring and locating lines, angles, elevations, natural and man-made features in the air, on the surface of the earth, within underground workings, and on the beds of bodies of water for the purpose of determining areas and volumes, for the monumenting of property boundaries, and for the platting and layout of lands and subdivisions thereof, including the topography, alignment and grades of street and incidental drainage within the subdivision, and for the preparation and perpetuation of maps, record plats, field note records, and property descriptions that represent these surveys.~~ Providing professional services such as consultation, investigation, testimony, evaluation, planning, mapping, assembling, and interpreting reliable scientific measurements and information relative to the location, size, shape, or physical features of the earth, improvements on the earth, the space above the earth, or any part of the earth, whether the gathering of information for the providing of these services is accomplished by conventional ground measurements, by aerial photography, by global positioning via satellites, or by a combination of any of these methods, and the utilization and development of these facts and interpretations into an orderly survey map, plan, report, description, or project. The practice of land surveying includes the following:
 - 1. Locating, relocating, establishing, laying out, or retracing any property line, easement, or boundary of any tract of land;
 - 2. Locating, relocating, establishing, or laying out the alignment or elevation of any of the fixed works embraced within the practice of professional engineering;

3. Making any survey for the subdivision of any tract of land, including the topography, alignment and grades of streets and incidental drainage within the subdivision, and the preparation and perpetuation of maps, record plats, field note records, and property descriptions that represent these surveys;
 4. Determining, by the use of the principles of land surveying, the position for any survey monument or reference point, or setting, resetting, or replacing any survey monument or reference point;
 5. Determining the configuration or contour of the earth's surface or the position of fixed objects on the earth's surface by measuring lines and angles and applying the principles of mathematics or photogrammetry;
 6. Providing geodetic surveying which includes surveying for determination of the size and shape of the earth both horizontally and vertically and the precise positioning of points on the earth utilizing angular and linear measurements through spatially oriented spherical geometry; and
 7. Creating, preparing, or modifying electronic or computerized data, including land information systems and geographic information systems relative to the performance of the practice of land surveying.
- b. The term 'practice of land surveying' shall not be construed to permit the design or preparation of specifications for (i) major highways; (ii) wastewater systems; (iii) wastewater or industrial waste treatment works; (iv) pumping or lift stations; (v) water supply, treatment, or distribution systems; (vi) streets or storm sewer systems except as incidental to a subdivision.
- (8) Professional engineer. -- A person who has been duly ~~registered~~ and licensed as a professional engineer by the Board established by this Chapter.
- (8a) Professional engineer, retired. -- A person who has been duly licensed as a professional engineer by the Board and who chooses to relinquish or not to renew a license and who applies to and is approved by the Board to be granted the use of the honorific title 'Professional Engineer, Retired'.
- (9) ~~Registered~~ Professional land surveyor. -- A person who, by reason of ~~his~~ special knowledge of mathematics, surveying principles and methods, and legal requirements which are acquired by education and/or practical experience, is qualified to engage in the practice of land surveying, ~~as herein defined~~, as attested by ~~his registration~~ the person's licensure as a registered professional land surveyor by the Board.
- (9a) Professional land surveyor, retired. -- A person who has been duly licensed as a professional land surveyor by the Board and who chooses to relinquish or not to renew a license and who

applies to and is approved by the Board to be granted the use of the honorific title 'Professional Land Surveyor, Retired'.

- (10) Responsible charge. -- Direct control and personal supervision, either of engineering work or of land surveying, as the case may be."

Section 3. G.S. 89C-4 reads as rewritten:

"§ 89C-4. State Board of Registration; Examiners for Engineers and Surveyors; appointment; terms.

A State Board of ~~Registration~~ Examiners for Professional Engineers and Land Surveyors, whose duty it is to administer the provisions of this Chapter, is created. The Board shall consist of four ~~registered~~ licensed professional engineers, three ~~registered~~ licensed professional land surveyors and two public members, who are neither professional engineers nor professional land surveyors. Of the land surveyor members, one and only one may hold dual ~~registration~~ licenses as a professional land surveyor and professional engineer. All of the members shall be appointed by the Governor. Appointments of the engineer and land surveyor members shall preferably, but not necessarily, be made from a list of nominees submitted by the professional societies for engineers and land surveyors in this State. Each member of the Board shall receive a certificate of appointment from the Governor and shall file with the Secretary of State ~~his~~ a written oath or affirmation for the faithful discharge of ~~his~~ the duties.

Members of the Board serve for staggered five-year terms, and no member may be appointed for more than two full terms. Members serve until the expiration of their respective terms and until their respective successors are appointed. If a vacancy occurs during a term, the Governor shall appoint a successor from the same classification as the person causing the vacancy to serve for the remainder of the unexpired term. If the vacancy is not filled within 90 days after it occurs, the Board may appoint a provisional member to serve until the appointment by the Governor becomes effective. The provisional member during his tenure has all the powers and duties of a regular member."

Section 4. G.S. 89C-5 reads as rewritten:

"§ 89C-5. Board members; qualifications.

Each engineer member of the Board shall be a resident of North Carolina and shall be a ~~registered~~ licensed professional engineer engaged in the lawful practice of engineering in North Carolina for at least six years.

Each land surveyor member of the Board shall be a resident of North Carolina and shall be a ~~registered~~ licensed professional land surveyor engaged in the lawful practice of land surveying in North Carolina for at least six years.

Each public member of the Board shall be a resident of North Carolina."

Section 5. G.S. 89C-6 reads as rewritten:

"§ 89C-6. Compensation and expenses of Board members.

Each member of the Board, when attending to the work of the Board or any of its committees, shall receive as compensation for ~~his~~ service ~~services~~ the per diem and, in ~~addition thereto~~, addition, shall be reimbursed for travel expenses and incidentals not exceeding the maximum set forth by law. In addition to per diem allowances, travel and incidentals, the secretary of

the Board may, with the approval of the Board, receive such reasonable additional compensation as is compatible with the actual hours of work required by the duties of his the office."

Section 6. G.S. 89C-8 reads as rewritten:

"§ 89C-8. *Organization of the Board; meetings; election of officers.*

The Board shall hold at least two regular meetings each year. Special meetings may be held at such times and upon such notice as the rules and regulations of the Board may provide. The Board shall elect annually from its members a chairman, chair, a vice-chairman, vice-chair, and a secretary. A quorum of the Board shall consist of not less than five members. The Board shall operate under its rules and regulations supplemented by Robert's Rules of Order."

Section 7. G.S. 89C-9 reads as rewritten:

"§ 89C-9. *Executive ~~secretary~~; director; duties and liabilities.*

The Board shall employ an executive ~~secretary~~ director who is not a member of the Board. The executive ~~secretary~~ director shall be a full-time employee of the Board and perform such the duties assigned to him the director by the secretary subject to the approval of the Board. The executive ~~secretary~~ director shall receive a salary and compensation fixed by the Board. The executive ~~secretary~~ director shall give a surety bond satisfactory to the Board conditioned upon the faithful performance of his the director's ~~duties, duties assigned.~~ The premium on ~~said the~~ bond shall be a necessary and proper expense of the Board."

Section 8. G.S. 89C-10 reads as rewritten:

"§ 89C-10. *Board powers.*

(a) The Board ~~shall have the power to may~~ adopt and amend all ~~rules and regulations.~~ Additionally, the Board shall have the power to adopt such rules, rules and rules of procedure, and regulations, procedure as may be reasonably necessary for the proper performance of its duties, the regulation of its procedures, meetings, records, the giving of administration of examinations and the conduct thereof, examinations, and the power authority to enforce such the rules of professional conduct as may, from time to time, may be adopted by the Board pursuant to G.S. 89C-20.

The action by the Board in carrying out any of the powers specified above in this section shall be binding upon all persons ~~registered~~ licensed under this Chapter, including corporations and business firms holding certificates of authorization.

(b) The Board shall adopt and have an official seal, which shall be affixed to each certificate issued.

(c) The Board ~~is hereby authorized may~~ in the name of the State ~~to~~ apply for relief, by injunction, in the established manner provided in cases of civil procedure, without bond, to enforce the provisions of this Chapter, or to restrain any violation ~~thereof, of the provisions of this Chapter.~~ In such proceedings, proceedings for injunctive relief, it shall not be necessary to allege or prove either that an adequate remedy at law does not exist, or that substantial or irreparable damage would result from the continued violation ~~thereof, of the provisions of this Chapter.~~ The members of the Board shall not be personally liable under this proceeding.

(d) The Board may subject an applicant for registration licensure to such any examination as it deems necessary to determine his the applicant's qualifications.

(e) The Board ~~shall have the power to~~ may issue an appropriate certificate of registration licensure to any applicant who, in the opinion of the Board, has met the requirements of this Chapter.

(f) It shall be the responsibility and duty of the Board to conduct a regular program of investigation concerning all matters within its jurisdiction under the provisions of this Chapter. The investigation of a registrant licensee is confidential until the Board issues a citation to the registrant licensee. The Board may expend its funds for salaries, fees, and per diem expenses, in connection with its investigations, provided that no ~~such~~ funds other than per diem expenses shall be paid to any member of the Board in connection with its investigations, nor may any member of the Board give testimony and ~~thereafter~~ later sit in deciding on any matter which may directly involve punitive action ~~under such~~ for the testimony.

(g) The Board ~~is authorized and empowered to~~ may use its funds to establish and conduct instructional programs for persons who are currently registered licensed to practice engineering or land surveying, as well as refresher courses for persons interested in obtaining adequate instruction or programs of study to qualify them for registration licensure to practice engineering or land surveying. The Board may expend its funds for these purposes and ~~is authorized and empowered~~ may not only ~~to~~ conduct, sponsor, and arrange for instructional programs, but also ~~to~~ may carry out ~~such instructional programs through extension courses or other media, and the media.~~ The Board may enter into plans or agreements with community colleges, public or private institutions of higher learning, ~~both public and private~~, State and county boards of education, or with the governing authority of any industrial education center for the purpose of planning, scheduling or arranging ~~such~~ courses, instruction, extension courses, or in assisting in obtaining courses of study or programs in the field of engineering and land surveying. The Board shall ~~make every effort practical~~ to encourage the educational institutions in this State to offer courses necessary to complete the educational requirements of this Chapter. For the purpose of carrying out these objectives, the Board ~~is authorized to make and promulgate such~~ may adopt rules and regulations as may be necessary for such the educational programs, instruction, extension services, or for entering into plans or contracts with persons or educational and industrial institutions.

(h) The Board may license sponsors of continuing professional competency activities who agree to conduct programs in accordance with standards adopted by the Board. Sponsors shall pay a license fee established by the Board, not to exceed two hundred fifty dollars (\$250.00) for licensure under this subsection. The license fee shall accompany the application. Sponsors shall renew their licenses annually on a form provided by the Board."

Section 9. G.S. 89C-11 reads as rewritten:

"§ 89C-11. *Secretary; duties and liabilities; expenditures.*

The secretary of the Board shall receive and account for all moneys derived from the operation of the Board as provided in this Chapter, and shall deposit them in one or more special funds in banks or other financial institutions carrying deposit insurance and authorized to do business in North Carolina. The fund or funds shall be designated as 'Fund of the Board of Registration Examiners for Professional Engineers and Land Surveyors' and shall be drawn against only for the purpose of implementing provisions of this Chapter as herein provided. All expenses certified by the Board as properly and necessarily incurred in the discharge of its duties, including authorized compensation, shall be paid out of ~~said this fund~~ on the warrant signed by the secretary of the ~~Board; provided, however, that at~~ Board. At no time shall the total of warrants issued exceed the total amount of funds accumulated under this Chapter. The secretary of the Board shall give a surety bond satisfactory to the State Board of Registration Examiners for Professional Engineers and Land Surveyors, conditioned upon the faithful performance of ~~his duties, the duties assigned.~~ The premium on ~~said~~ the bond ~~shall be regarded as~~ is a proper and necessary expense of the Board. The secretary of the Board may delegate to the executive ~~secretary~~ director certain routine duties, such as receipt and disbursement of funds in stated amounts by a written authorization, which has the unanimous approval of the Board."

Section 10. G.S. 89C-12 reads as rewritten:

"§ 89C-12. *Records and reports of Board; evidence.*

The Board shall keep a record of its proceedings and a register of all applicants for registration, licensure, showing for each the date of application, name, age, education, and other qualifications, place of business and place of residence, whether the applicant was rejected or a certificate of registration licensure granted, and the date of ~~such action.~~ licensure was rejected or granted. The books and register of the Board shall be prima facie evidence of all matters recorded ~~therein, by the Board,~~ and a copy duly certified by the secretary of the Board under seal shall be admissible in evidence as if the original were produced. A roster showing the names and places of business and of residence of all registered licensed professional engineers and all registered licensed professional land surveyors shall be prepared by the secretary of the Board current to the month of January of each year; ~~such year.~~ The roster shall be printed by the Board out of the Board's fund of ~~said Board~~ and distributed as ~~set forth~~ described in the Board's ~~rules and regulations, rules.~~ On or before the first day of May of each year, the Board shall submit to the Governor a report on its transactions for the preceding year, and shall file with the Secretary of State a copy of ~~such~~ the report, together with a complete statement of the receipts and expenditures of the ~~Board, Board~~ attested by the ~~affidavits of the chairman chair and the secretary, secretary~~ and a copy of the ~~said the~~ roster of registered licensed professional engineers and registered licensed professional land surveyors."

Section 11. G.S. 89C-13 reads as rewritten:

"§ 89C-13. *General requirements for ~~registration- licensure.~~*

(a) Engineer Applicant. -- To be eligible for ~~admission to examination for licensure as a professional engineer engineer,~~ an applicant must be of

good character and reputation. An applicant desiring to take the examination in the fundamentals of engineering ~~only~~ must submit three character ~~references.~~ references, one of whom shall be a professional engineer. An applicant desiring to take the examination in the principles and practice of engineering must submit five references, two of whom shall be professional engineers having personal knowledge of ~~his~~ the applicant's engineering experiences.

The following shall be considered as minimum evidence satisfactory to the Board that the applicant is qualified for ~~registration;~~ licensure:

(1) As a professional engineer (shall meet one):

- a. ~~Registration~~ Licensure by Comity or Endorsement. -- A person holding a certificate of ~~registration~~ licensure to engage in the practice of engineering, on the basis of comparable qualifications, issued to ~~him~~ the person by a proper authority of a state, territory, or possession of the United States, the District of Columbia, or of Canada, who completes an application for licensure and submits five references, two of which shall be from professional engineers having personal knowledge of the applicant's engineering experience, and who in the opinion of the Board, meets the requirements of this Chapter, based on verified evidence may, upon application, be ~~registered~~ licensed without further examination.

A person holding a certificate of qualification issued by the Committee on National Engineering Certification of the National Council of ~~Engineering Examiners,~~ Examiners for Engineering and Surveying whose qualifications meet the requirements of this Chapter, may upon application, be ~~registered~~ licensed without further examination.

- b. ~~E.I.T.~~ E.I. Certificate, Experience, and Examination. -- A holder of a certificate of ~~engineer-in-training~~ engineering intern issued by the Board, and with a specific record of an additional four years or more of progressive experience on engineering projects of a grade and character which indicates to the Board that the applicant may be competent to practice engineering, shall be admitted to ~~an eight-hour examination in the principles and practice of engineering,~~ engineering examination. Upon passing ~~such~~ the examination, the applicant shall be granted a certificate of ~~registration~~ licensure to practice professional engineering in this State, provided ~~he~~ the applicant is otherwise qualified.
- c. Graduation, Experience, and Examination. -- A graduate of an engineering curriculum of four years or more approved by the Board as being of satisfactory standing, and with a specific record of an additional four years or more of progressive experience on engineering projects of a grade and character which indicates to the Board that the applicant may be competent to practice engineering, shall be admitted to ~~an eight-hour written examination in the fundamentals of engineering,~~ engineering examination, and ~~an eight-hour~~

- ~~written examination in the principles and practice of engineering, engineering examination.~~ Upon passing such the examinations, the applicant shall be granted a certificate of registration licensure to practice professional engineering in this State, provided he the applicant is otherwise qualified.
- d. Graduation, Experience, and Examination. -- A graduate of an engineering or related science curriculum of four years or more, other than the ones approved by the Board as being of satisfactory standing or with an equivalent education and engineering experience satisfactory to the Board and with a specific record of eight years or more of progressive experience on engineering projects of a grade and character which indicates to the Board that the applicant may be competent in the fundamentals of engineering, shall be admitted to ~~an eight-hour written examination in the fundamentals of engineering, engineering examination and an eight-hour written examination in the principles and practice of engineering, engineering examination.~~ Upon passing such the examinations, the applicant shall be granted a certificate of registration licensure to practice professional engineering in this State, provided he the applicant is otherwise qualified.
- e. Long-Established Practice. -- ~~An individual~~ A person with a specific record of 20 years or more of progressive experience on engineering projects of a grade and character which indicates to the Board that the applicant may be competent to practice engineering shall be admitted to ~~an eight-hour written examination in the principles and practice of engineering, engineering examination.~~ Upon passing such the examination, the applicant shall be granted a certificate of registration licensure to practice professional engineering in this State, provided he the applicant is otherwise qualified.

At its discretion the Board may require an applicant to submit exhibits, drawings, designs, or other tangible evidence of engineering work ~~executed by him and which he the applicant~~ personally accomplished or supervised.

The following shall be considered as minimum evidence that the applicant is qualified for certification:

- (2) As an engineer-in-training engineering intern (shall meet one):
- a. Graduation and Examination. -- A graduate of an engineering curriculum or related science curriculum of four years or more, approved by the Board as being of satisfactory standing, or a student who has attained senior status in an accredited engineering program, shall be admitted to ~~an eight-hour written examination in the fundamentals of engineering, engineering examination.~~ The applicant shall be notified if the examination was passed or not passed and if passed he shall be certified as an engineer-in-training, engineering intern if ~~he the applicant~~ is otherwise qualified.
- b. Graduation, Experience, and Examination. -- A graduate of an engineering or related science curriculum of four years or

more, other than the ones approved by the Board as being of satisfactory standing, or with equivalent education and engineering experience satisfactory to the Board and with a specific record of four or more years of progressive experience on engineering projects of a grade and character satisfactory to the Board, shall be admitted to ~~an eight-hour written examination in the fundamentals of engineering, engineering examination.~~ The applicant shall be notified if the examination was passed or not passed and if ~~passed he passed,~~ the applicant shall be certified as an ~~engineer-in-training~~ engineering intern if ~~he~~ the applicant is otherwise qualified.

(b) Land Surveyor Applicant. -- To be eligible for admission to examination for land ~~surveyor-in-training,~~ surveyor intern or registered professional land surveyor, an applicant must be of good character and reputation and shall submit five references with ~~his~~ the application for ~~registration~~ licensure as a land surveyor, two of which references shall be ~~registered professional~~ land surveyors having personal knowledge of ~~his~~ the applicant's land surveying experience, or in the case of an application for certification as a land ~~surveyor-in-training~~ surveyor intern by three references, one of which shall be a ~~registered licensed~~ land surveyor having personal knowledge of the applicant's land surveying experience.

The evaluation of a land surveyor applicant's qualifications shall involve a consideration of ~~his~~ the applicant's education, technical and land surveying experience, exhibits of land surveying projects with which ~~he~~ the applicant has been associated, ~~and recommendations by references, and reviewing of these categories during an oral examination,~~ references, and reviewing of these categories during an oral examination, references. The land surveyor applicant's qualifications may be reviewed at an interview if the Board ~~deems~~ determines it necessary. Educational credit for institute courses, correspondence courses, ~~etc.,~~ or other courses shall be determined by the Board.

The following shall be considered a minimum evidence satisfactory to the Board that the applicant is qualified for ~~registration~~ licensure as a professional land surveyor or for certification as a land ~~surveyor-in-training,~~ surveyor intern respectively:

- (1) As a ~~registered professional~~ land surveyor (shall meet one):
 - a. Rightful possession of a ~~B.S.,~~ bachelor of science degree in surveying or other equivalent curricula, all approved by the Board and a record satisfactory to the Board of ~~one year~~ two years or more of progressive practical ~~experience~~ experience, one year of which shall have been under a practicing ~~registered professional~~ land surveyor and satisfactorily passing ~~such any~~ oral and written ~~examination, taken in the presence of and~~ examination required by the Board, all of which shall determine and indicate that the ~~candidate~~ applicant is competent to practice land surveying. The applicant may ~~elect~~ be qualified by the Board to take the first examination (Surveying Fundamentals) immediately after obtaining the ~~B.S.,~~ bachelor of science degree at the first regularly scheduled examination thereafter. Upon passing the first examination and successful

completion of the experience required by this subdivision, the applicant may apply to take the second examination (Principles and Practice of Land Surveying). An applicant who passes both examinations and completes the educational and experience requirements of this subdivision shall be granted ~~registration~~ licensure as a professional land surveyor.

- b. Rightful possession of an associate degree in surveying technology approved by the Board and a record satisfactory to the Board of ~~three~~ four years of progressive practical experience, ~~two~~ three years of which shall have been under a practicing ~~registered~~ licensed land surveyor, and satisfactorily passing such any written and oral examination ~~taken in the presence of and as~~ required by the Board, all of which shall determine and indicate that the ~~candidate~~ applicant is competent to practice land surveying. The applicant may ~~elect~~ apply to the Board to take the first examination (Surveying Fundamentals) immediately after obtaining the associate degree at the first regularly scheduled examination thereafter. Upon passing the first examination and successfully completing ~~years of progressive practical experience under a practicing registered land surveyor, the practical experience required under this subdivision, the applicant may elect~~ apply to the Board to take the second examination (Principles and Practice of Land Surveying) prior to, during, or after completion of the additional experience required by this subdivision. (Principles and Practice of Land Surveying). An applicant who passes both examinations and successfully completes the educational and experience requirements of this subdivision shall be granted ~~registration~~ licensure as a professional land surveyor.
- c. ~~Land Surveyor-in-Training Certificate, Experience, and Examination. -- A holder of a certificate of land surveyor-in-training issued by the Board, and with a specific record of an additional two years or more of progressive surveying experience, one year of which shall have been under a practicing registered land surveyor, of a grade and character which indicates to the Board that the applicant may be competent to practice land surveying, shall be admitted to two four-hour examinations. Upon passing such examinations, the applicant shall be granted a certificate of registration to practice land surveying in this State, provided he is otherwise qualified.~~
- d. Graduation from a high school or the completion of a high school equivalency certificate and a record satisfactory to the Board of seven years of progressive practical experience, six years of which shall have been under a practicing ~~registered~~ licensed land surveyor, and satisfactorily passing such any oral and written examination ~~written in the presence of and examinations~~ required by the Board, all of which shall determine and indicate that the candidate is competent to practice land surveying. The applicant may be qualified by the

Board to take the first examination (Surveying Fundamentals) upon graduation from high school or the completion of a high school equivalency certificate and successfully completing six years of progressive practice experience, five of which shall have been under a practicing licensed land surveyor. The applicant may apply to take the second examination (Principles and Practice of Land Surveying) upon passing the first examination and successfully completing four years of progressive practical experience, two of which shall have been under a practicing licensed land surveyor.

- e. Repealed by Session Laws 1985 (Regular Session, 1986), c. 977, s. 7.
- f. Registration Licensure by Comity or Endorsement. -- A person holding a certificate of ~~registration~~ licensure to engage in the practice of land surveying issued on comparable qualifications from a state, territory, or possession of the United States will be given comity considerations. However, ~~he~~ the applicant may be asked to take ~~such any~~ any examinations as the Board ~~deems necessary~~ requires to determine ~~his~~ the applicant's qualifications, but in any event, ~~he~~ the applicant shall be required to pass ~~a written~~ an examination which shall include questions on laws, procedures, and practices pertaining to the practice of land surveying in North Carolina.
- g. A licensed professional engineer who can satisfactorily demonstrate to the Board that ~~his~~ the professional engineer's formal academic training in acquiring a degree and field experience in engineering includes land surveying, to the extent necessary to reasonably qualify the applicant in the practice of land surveying, may apply for and may be granted permission to take the ~~two four-hour examinations on the principles and practice of land surveying examination and the two four-hour examinations on the fundamentals of land surveying.~~ surveying examination. Upon satisfactorily passing the examinations, the applicant ~~will~~ shall be granted a license to practice land surveying in the State of North Carolina.
- h. Professional Engineers in Land Surveying. -- Any person presently licensed to practice professional engineering under this Chapter shall upon ~~his~~ an application be licensed to practice land surveying, providing ~~his~~ a written application is filed with the Board within one year next after June 19, 1975.
- i. Photogrammetrists. -- Any person presently practicing photogrammetry with at least seven years of experience in the profession, two or more of which shall have been in responsible charge of photogrammetric mapping projects meeting National Map Accuracy Standards shall, upon application, be licensed to practice land surveying, provided:
 - 1. The applicant submit certified proof of graduation from high school, high school equivalency, or higher degree;

2. The applicant submit proof of employment in responsible charge as a photogrammetrist practicing within the State of North Carolina to include itemized reports detailing methods, procedures, amount of applicant's personal involvement and the name, address, and telephone numbers of the client for five projects completed by the applicant with the State. A final map for one of the five projects shall also be submitted;
3. Five references to the applicant's character and quality of work, three of which shall be from professional land surveyors, are submitted to the Board; and
4. The application is submitted to the Board by July 1, 1999. After July 1, 1999, no photogrammetrist shall be licensed without meeting the same requirements as to education, length of experience, and testing required of all land surveying applicants.

The Board shall require an applicant to submit exhibits, drawings, plats or other tangible evidence of land surveying work executed by ~~him~~ the applicant under proper supervision and which ~~he~~ the applicant has personally accomplished or supervised.

Land surveying encompasses a number of disciplines including geodetic surveying, hydrographic surveying, cadastral surveying, engineering surveying, route surveying, photogrammetric (aerial) surveying, and topographic surveying. A professional land surveyor shall practice only within the surveyor's area of expertise.

- (2) As a land ~~surveyor in training~~ surveyor intern (shall meet one):
- a. Rightful possession of an associate degree in surveying technology approved by the Board and satisfactorily passing a written ~~or and~~ oral examination ~~taken in the presence of and~~ as required by the Board.
 - b. Rightful possession of a ~~B.S.~~ bachelors degree in surveying or other equivalent curricula in surveying all approved by the Board and satisfactorily passing such any oral and written examinations ~~written in the presence of and~~ required by the Board.
 - c. Graduation from high school or the completion of a high school equivalency certificate and a record satisfactory to the Board of five years of progressive, practical experience, four years of which shall have been under a practicing registered licensed land surveyor and satisfactorily passing any oral and written examinations ~~taken in the presence of and as~~ required by the Board.

The Board shall require an applicant to submit exhibits, drawings, plats, or other tangible evidence of land surveying work executed by ~~him~~ the applicant under proper supervision and which ~~he~~ the applicant has personally accomplished or supervised."

Section 12. G.S. 89C-14 reads as rewritten:

"§ 89C-14. Application for ~~registration; registration~~ licensure; license fees.

(a) Application for ~~registration~~ licensure as a professional engineer or ~~registered professional~~ land surveyor shall be on a form prescribed and furnished by the Board. It shall contain statements made under oath, showing the applicant's education and a detailed summary of ~~his~~ the applicant's technical and engineering or land surveying experience, and shall include the names and complete mailing addresses of the references, none of whom ~~should~~ may be immediate members of the applicant's family or members of the Board.

The Board may accept the certified information on the copy of a current formal certificate of qualifications issued by the National Council of ~~Engineering Examiners Committee or National Engineering Certification for Professional Engineer applicants~~ Examiners for Engineering and Surveying in lieu of the same information that is required for the form prescribed and furnished by the Board.

(b) An applicant for ~~registration~~ licensure who is required to take the written examination shall pay ~~a fee equal to the cost of the examination to the Board plus an additional amount to the Board~~ an application fee not to exceed one hundred dollars (\$100.00). The Board may charge any fee necessary to defray the cost of any required examinations. The fee shall accompany the application. The fee for comity ~~registration~~ licensure of engineers and land surveyors who hold unexpired certificates in another state or a territory of the United States or in Canada shall be the total current fee as fixed by the Board.

(c) The certification fee for a corporation is the amount set by the Board ~~in accordance with G.S. 55B-10, but shall not exceed one hundred dollars (\$100.00).~~ The fee shall accompany the application. The certification fee for a business firm is the same as the fee for a corporation. The fee for renewal of a certificate of ~~registration~~ licensure of a corporation is the amount set by the Board ~~in accordance with G.S. 55B-11, but shall not exceed seventy-five dollars (\$75.00).~~ The fee for renewal of a certificate of ~~registration~~ licensure for a business firm is the same as the renewal fee for a corporation.

(d) Should the Board deny the issuance of a certificate of ~~registration~~ licensure to any applicant, the unobligated portion of fees paid shall be returned by the Board to the applicant.

(e) A candidate failing an examination may apply, and be considered by the Board, for reexamination at the end of six months. The Board shall make such reexamination charge as is necessary to defray the cost of the examination.

A candidate failing an examination three times will not be permitted to take a reexamination until he has made a written appeal to the Board and his tentative qualifications for the examination are reviewed and reaffirmed by the Board, with a combination of three failures or unexcused absences on an examination shall only be eligible after submitting a new application with appropriate application fee, and be considered by the Board for reexamination at the end of 12 months. After the end of the 12-month period, the applicant may take the examination no more than once every calendar year."

Section 13. G.S. 89C-15 reads as rewritten:*"§ 89C-15. Examinations.*

(a) The examinations will be held at ~~such~~ the times and places as the Board directs. The Board shall determine the passing grade on examinations. All examinations shall be approved by the entire Board.

(b) Written examinations will be given in sections and may be taken only after the applicant has met the other minimum requirements as given in ~~G.S. 89C-13~~, G.S. 89C-13 and has been approved by the Board for admission to the examination as follows:

- (1) Engineering Fundamentals. -- Consists of an eight-hour examination on the fundamentals of engineering. Passing this examination qualifies the ~~examinee~~ applicant for an ~~engineer-in-training~~ engineering intern certificate, provided ~~he~~ the applicant has met all other requirements for ~~certification~~ licensure required by this Chapter.
- (2) Principles and Practice of Engineering. -- Consists of an eight-hour examination on applied engineering. Passing this examination qualifies the ~~examinee~~ applicant for ~~registration~~ licensure as a professional engineer, provided ~~he~~ the applicant has met the other requirements for registration required by this Chapter.
- (3) Surveying Fundamentals. -- Consists of ~~two four-hour examinations~~ an eight-hour examination on the elementary disciplines of land surveying. ~~Passing both of these examinations~~ this examination qualifies the ~~examinee~~ applicant for a land ~~surveyor-in-training~~ surveyor intern certificate provided ~~he~~ the applicant has met all other requirements for certification required by this Chapter.
- (4) Principles and Practices of Land Surveying. -- Consists of ~~two four-hour examinations~~ a six-hour examination on the basic and applied disciplines of land surveying, ~~one examination on basic disciplines and the other examination covering applied disciplines.~~ surveying and a two-hour examination on requirements specific to the practice of land surveying in North Carolina. Passing each of these examinations qualifies the ~~examinee~~ applicant for a ~~registered~~ professional land surveyor certificate provided ~~he~~ the applicant has met all other requirements for certification required by this Chapter."

Section 14. G.S. 89C-16 reads as rewritten:*"§ 89C-16. Certificates of ~~registration~~; licensure; effect; seals.*

(a) The Board shall issue to any applicant, who, in the opinion of the Board, has met the requirements of this Chapter, a certificate of ~~registration~~ licensure giving the ~~registrant~~ licensee proper authority to practice ~~his~~ the profession in this State. The certificate of ~~registration~~ licensure for a professional engineer shall carry the designation 'professional engineer,' and for a land surveyor, ~~registered~~ professional 'land surveyor,' shall give the full name of the ~~registrant~~ licensee with ~~his~~ the ~~serial~~ the Board designated licensure number and shall be signed by the ~~chairman~~ chair and the secretary under the seal of the Board.

(b) This certificate shall be prima facie evidence that the person named ~~thereon~~ on the certificate is entitled to all rights, privileges and responsibilities of a professional engineer or a registered professional land surveyor, while the said certificate of registration licensure remains unrevoked or unexpired.

(c) Each ~~registrant hereunder~~ licensee shall upon registration licensure obtain a seal of a design authorized by the Board bearing the ~~registrant's~~ licensee's name, serial license number, and the legend, 'professional engineer,' or 'registered professional land surveyor.' Final drawings, specifications, plans and reports prepared by a registrant licensee shall, when issued, be certified and stamped with the ~~said seal or facsimile thereof~~ of the seal unless the registrant licensee is exempt under the provisions of G.S. 89C-25(7). It shall be unlawful for a registrant licensee to affix, or permit his the licensee's seal and signature or facsimile thereof of the seal and signature to be affixed to any drawings, specifications, plans or reports after the expiration of a certificate or for the purpose of aiding or abetting any other person to evade or attempt to evade any provision of this Chapter. A professional engineer practicing land surveying shall use his-registered the licensee's land surveyor seal."

Section 15. G.S. 89C-17 reads as rewritten:

"§ 89C-17. *Expirations and renewals of certificates.*

Certificates for ~~registration~~ licensure shall expire on the last day of the month of December next following their issuance or renewal, and shall become invalid on that date unless renewed. When necessary to protect the public health, safety, or welfare, the Board shall require ~~such any~~ evidence as it deems necessary to establish the continuing competency of engineers and land surveyors as a condition of renewal of licenses. When the Board is satisfied as to the continuing competency of an applicant, it shall issue a renewal of the certificate upon payment by the applicant of a fee fixed by the Board but not to exceed ~~fifty dollars (\$50.00), seventy-five dollars (\$75.00).~~ The secretary of the Board shall notify by mail every person registered licensed under this Chapter of the date of expiration of ~~his the~~ the certificate, the amount of the fee required for its renewal for one year, and any requirement as to evidence of continued competency. The notice shall be mailed at least one month in advance of the expiration date of the certificate. Renewal shall be effected at any time during the month of January immediately following, by payment to the secretary of the Board of a renewal fee, as determined by the Board, which shall not exceed ~~fifty dollars (\$50.00), seventy-five dollars (\$75.00).~~ Failure on the part of any registrant to renew ~~his the~~ the certificate annually in the month of January, as required above, shall deprive the registrant of the right to practice until renewal has been effected. Renewal may be effected at any time during the first ~~36 12~~ 12 months immediately following its invalidation ~~of payment of the renewal fee increased ten percent (10%) for each month or fraction of a month that payment for renewal is delayed, by payment of the established renewal fee and a late penalty of one hundred dollars (\$100.00).~~ Failure of a ~~registrant licensee~~ licensee to renew ~~his registration the license~~ the license for a period of ~~36 12~~ 12 months shall require the individual, prior to resuming practice in North Carolina, to submit an application ~~therefor~~ on the prescribed form, and to meet all other

requirements for ~~registration~~ licensure as set forth in Chapter 89C. The secretary of the Board is instructed to remove from the official roster of engineers and land surveyors the names of all ~~registrants~~ licensees who have not effected their renewal by the first day of February immediately following the date of their expiration. The Board may ~~enact~~ adopt rules to provide for renewals in distress or hardship cases due to military service, prolonged illness, or prolonged absence from the State, where the applicant for renewal demonstrates to the Board that ~~he~~ the applicant has maintained ~~his~~ active knowledge and professional status as an engineer or land surveyor, as the case may be. It shall be the responsibility of each ~~registrant~~ licensee to inform the Board promptly concerning change in address. A licensee may request and be granted inactive status. No inactive licensee may practice in this State unless otherwise exempted in this Chapter. A licensee granted inactive status shall pay annual renewal fees but shall not be subject to annual continuing professional competency requirements. A licensee granted inactive status may return to active status by meeting all requirements of the Board, including demonstration of continuing professional competency as a condition of reinstatement.

Section 16. G.S. 89C-18 reads as rewritten:

"§ 89C-18. *Duplicate certificates.*

The Board may issue a duplicate certificate of ~~registration~~ licensure or certificate of authorization to replace any certificate that has been lost, destroyed, or mutilated and may charge a fee of up to twenty-five dollars (\$25.00) for issuing the certificate."

Section 17. G.S. 89C-19 reads as rewritten:

"§ 89C-19. *Public works; requirements where public safety involved.*

This State and its political subdivisions such as counties, cities, towns, or other political entities or legally constituted boards, commissions, public utility companies, or authorities, or officials, or employees ~~thereof~~ of these entities shall not engage in the practice of engineering or land surveying involving either public or private property where the safety of the public is directly involved without the project being under the supervision of a professional engineer for the preparations of plans and specifications for engineering projects, or a ~~registered~~ professional land surveyor for land surveying projects, as provided for the practice of the respective professions by this Chapter.

An official or employee of the State or any political subdivision specified in this section, holding the positions set out in this section as of June 19, 1975, shall be exempt from the provisions of this section so long as such official or employee is engaged in substantially the same type of work as is involved in ~~his~~ the present position.

Nothing in this section shall be construed to prohibit inspection, maintenance and service work done by employees of the State of North Carolina, any political subdivision ~~thereof~~ of the State, or any municipality ~~therein~~ including construction, installation, servicing, and maintenance by regular full-time employees of, secondary roads and drawings incidental ~~thereto~~ to work on secondary roads, streets, street lighting, traffic-control signals, police and fire alarm systems, waterworks, steam, electric and sewage treatment and disposal plants, the services of superintendents,

inspectors or foremen regularly employed by the State of North Carolina or any political subdivision ~~thereof, of the State, or municipal corporation therein, corporation.~~

The provisions in this section shall not be construed to alter or modify the requirements of Article 1 of Chapter 133 of the General Statutes."

Section 18. G.S. 89C-20 reads as rewritten:

"§ 89C-20. *Rules of professional conduct.*

In the interest of protecting the safety, health, and welfare of the public, the Board shall ~~promulgate and~~ adopt rules of professional conduct applicable to the practice of engineering and land surveying. These rules, when adopted, shall be construed to be a reasonable exercise of the police power vested in the Board of ~~Registration~~ Examiners for Professional Engineers and Land Surveyors. Every person ~~registered~~ licensed by the Board shall subscribe to and observe the adopted rules as the standard of professional conduct for the practice of engineering and land ~~surveying~~ surveying and shall cooperate fully with the Board in the course of any investigation. In the case of violation of the rules of professional conduct, the Board shall ~~have the responsibility and duty to~~ proceed in accordance with G.S. 89C-22."

Section 19. G.S. 89C-21 reads as rewritten:

"§ 89C-21. *Disciplinary action -- Reexamination, revocation, suspension, reprimand, or civil penalty.*

(a) The Board may reprimand the licensee, suspend, refuse to renew, or revoke the certificate of ~~registration, licensure,~~ or, as appropriate, require reexamination, for any engineer or land surveyor, who is found:

- (1) Guilty of the practice of any fraud or deceit in obtaining a certificate of ~~registration~~ licensure or certificate of authorization.
- (2) Guilty of any gross negligence or misconduct in the practice of ~~his~~ the profession.
- (3) Guilty of any felony or any crime involving moral turpitude.
- (4) Guilty of violation of the Rules of Professional Conduct, as adopted by the Board.
- (5) To have been declared insane or incompetent by a court of competent jurisdiction and has not ~~thereafter~~ later been lawfully declared sane or competent.
- (6) Guilty of professional incompetence. In the event the Board finds that a certificate holder is incompetent the Board may, in its discretion, require oral or written examinations, or other indication of the certificate holder's fitness to practice ~~his~~ his ~~profession~~ engineering or land surveying and suspend ~~his~~ the license during any such period.

(b) The Board ~~shall have the power to~~ may (i) revoke a certificate of authorization, or (ii) to suspend a certificate of authorization for a period of time not exceeding two years, of any corporation or business firm where one or more of its officers or directors have committed any act or have been guilty of any conduct which would authorize a revocation or suspension of their certificates of ~~registration~~ licensure under the provision of this section.

(c) The Board may levy a civil penalty not in excess of two thousand dollars (\$2,000) for any engineer or land surveyor who violates any of the

provisions of subdivisions (1) through (4) of subsection (a) of this section. All civil penalties collected by the Board shall be deposited in the General Fund of North Carolina.

(d) Before imposing and assessing a civil penalty and fixing the ~~amount thereof~~, amount, the Board shall, as a part of its deliberation, take into consideration the following factors:

- (1) The nature, gravity, and persistence of the particular violations;
- (2) The appropriateness of the imposition of a civil penalty when considered alone or in combination with other punishment;
- (3) Whether the violation(s) were done willfully and maliciously; and
- (4) Any other factors which would tend to either mitigate or aggravate the violation(s) found to exist."

Section 20. G.S. 89C-22 reads as rewritten:

"§ 89C-22. *Disciplinary action -- Charges; procedure.*

(a) Any person may prefer charges of fraud, deceit, gross negligence, incompetence, misconduct, or violation of the rules of professional conduct, against any Board registrant. The charges shall be in writing and shall be sworn to by the person or persons making them and shall be filed with ~~the secretary of~~ the Board.

(b) All charges, unless dismissed by the Board as unfounded or trivial, shall be heard by the Board as provided under the requirements of Chapter 150B of the General Statutes.

(c) If, after ~~such a~~ hearing, a majority of the Board votes in favor of sustaining the charges, the Board shall reprimand, levy a civil penalty, suspend, refuse to renew, or revoke the ~~registrant's certificate of registration~~, licensee's certificate.

(d) A ~~registrant licensee~~ who is aggrieved by a final decision of the Board may appeal for judicial review as provided by Article 4 of Chapter 150B.

(e) The Board may, upon petition of an individual or an entity whose certificate has been revoked, for ~~sufficient reasons it may deem sufficient~~, reasons as it may determine, reissue a certificate of ~~registration licensure~~ or authorization, provided that a majority of the members of the Board vote in favor of such issuance."

Section 21. G.S. 89C-23 reads as rewritten:

"§ 89C-23. *Unlawful to practice engineering or land surveying without registration; licensure; unlawful use of title or terms; penalties; Attorney General to be legal adviser.*

Any person who shall practice, or offer to practice, engineering or land surveying in this State without first being ~~registered~~ licensed in accordance with the provisions of this Chapter, or any person, firm, partnership, organization, association, corporation, or other entity using or employing the words 'engineer' or 'engineering' or 'professional engineer' or 'professional engineering' or 'land surveyor' or 'land surveying,' or any modification or derivative ~~thereof~~ of those words in its name or form of business or activity except as ~~registered~~ licensed under this Chapter or in pursuit of activities exempted by this Chapter, or any person presenting or attempting to use the certificate of ~~registration licensure~~ or the seal of another, or any person who shall give any false or forged evidence of any kind to the Board or to any

member ~~thereof~~ of the Board in obtaining or attempting to obtain a certificate of ~~registration, licensure,~~ or any person who shall falsely impersonate any other ~~registrant licensee~~ of like or different name, or any person who shall attempt to use an expired or revoked or nonexistent certificate of ~~registration, licensure,~~ or who shall practice or offer to practice when not qualified, or any person who falsely claims that ~~he~~ the person is registered under this Chapter, or any person who shall violate any of the provisions of this Chapter, in addition to injunctive procedures set out hereinbefore, shall be guilty of a Class 2 misdemeanor. In no event shall there be representation of or holding out to the public of any engineering expertise by ~~unregistered unlicensed~~ persons. It shall be the duty of all duly constituted officers of the State and all political subdivisions ~~thereof~~ of the State to enforce the provisions of this Chapter and to prosecute any persons violating ~~same,~~ them.

The Attorney General of the State or ~~his~~ an assistant shall act as legal adviser to the Board and render ~~such~~ any legal assistance ~~as may be necessary in carrying to carry out the provisions of this Chapter.~~ The Board may employ counsel and necessary assistance to aid in the enforcement of this Chapter, and the compensation and expenses ~~therefor~~ for the assistance shall be paid from funds of the Board."

Section 22. G.S. 89C-24 reads as rewritten:

"§ 89C-24. ~~Registration Licensure~~ of corporations and business firms that engage in the practice of engineering or land surveying.

A corporation or business firm may not engage in the practice of engineering or land surveying in this State unless it is ~~registered with~~ licensed by the Board and has paid ~~the required registration fee,~~ an application fee established by the Board in an amount not to exceed one hundred dollars (\$100.00). A corporation or business firm is subject to the same duties and responsibilities as an individual ~~registrant.~~ Registration licensee. Licensure of a corporation or business firm does not affect the requirement that all engineering or land surveying work done by the corporation or business firm be performed by or under the responsible charge of individual registrants, nor does it relieve the individual registrants within a corporation or business firm of their design and supervision responsibilities.

This section applies to every corporation that is engaged in the practice of engineering or land surveying, regardless of when it was incorporated. A corporation that is not exempt from Chapter 55B of the General Statutes by application of G.S. 55B-15 must be incorporated under that Chapter."

Section 23. G.S. 89C-25 reads as rewritten:

"§ 89C-25. *Limitations on application of Chapter.*

This Chapter shall not be construed to prevent or affect:

- (1) The practice of architecture, landscape architecture, or contracting or any other legally recognized profession or trade.
- (2) The practice of professional engineering or land surveying in this State or by any person not a resident of this State and having no established place of business in this State when this practice does not aggregate more than 90 days in any calendar year, whether performed in this State or elsewhere, or involve more than one

- specific project; provided, however, that ~~such the~~ person is ~~legally qualified by registration~~ licensed to practice the ~~said~~ profession in ~~his the person's~~ own state or country, in which the requirements and qualifications for obtaining a certificate of ~~registration~~ licensure are satisfactory to the Board; in which case the person shall apply for and the Board will issue a temporary permit.
- (3) The practice of professional engineering or land surveying in this State not to aggregate more than 90 days by any person residing in this State, but whose residence has not been of sufficient duration for the Board to grant or deny ~~registration; licensure;~~ provided, however, ~~such the~~ person shall have filed an application for ~~registration~~ licensure as a professional engineer or ~~registered~~ professional land surveyor and shall have paid the fee provided for in G.S. 89C-14, and provided that ~~such a the~~ person is ~~legally qualified by registration~~ licensed to practice professional engineering or professional land surveying in ~~his the person's~~ own state or country in which the requirements and qualifications for obtaining a certificate of ~~registration~~ licensure are satisfactory to the Board, in which case the person shall apply for and the Board will issue a temporary permit.
 - (4) Engaging in engineering or land surveying as an employee or assistant under the responsible charge of a professional engineer or ~~registered~~ professional land surveyor or as an employee or assistant of a nonresident professional engineer or a nonresident ~~registered~~ professional land surveyor provided for in subdivisions (2) and (3) of this section, provided that ~~said the~~ work as an employee may not include responsible charge of design or supervision.
 - (5) The practice of professional engineering or land surveying by any person not a resident of, and having no established place of business in this State, as a consulting associate of a professional engineer or ~~registered~~ professional land surveyor ~~registered~~ licensed under the provisions of this Chapter; provided, the nonresident is qualified for ~~such performing the~~ professional service in ~~his the person's~~ own state or country.
 - (6) Practice by members of the armed forces or employees of the government of the United States while engaged in the practice of engineering or land surveying solely for ~~said the~~ government on government-owned works and projects; or practice by those employees of the Natural Resources Conservation Service having federal engineering job approval authority that involves the planning, designing, or implementation of best management practices on agricultural lands.
 - (7) The internal engineering or surveying activities of a person, firm or corporation engaged in manufacturing, processing, or producing a product, including the activities of public service corporations, public utility companies, authorities, State agencies, railroads, or membership cooperatives, or the installation and

servicing of their product in the field; or research and development in connection with the manufacture of that product or their service; or of their research affiliates; or their employees in the course of their employment in connection with the manufacture, installation, or servicing of their product or service in the field, or on-the-premises maintenance of machinery, equipment, or apparatus incidental to the manufacture or installation of the product or service of a firm by the employees of the firm upon property owned, leased or used by the firm; inspection, maintenance and service work done by employees of the State of North Carolina, any political subdivision ~~thereof~~, of the State, or any municipality ~~therein~~ including construction, installation, servicing, maintenance by regular full-time employees of streets, street lighting, traffic-control signals, police and fire alarm systems, waterworks, steam, electric and sewage treatment and disposal plants; the services of superintendents, inspectors or foremen regularly employed by the State of North Carolina or any political subdivision ~~thereof~~, of the State or a municipal corporation ~~therein~~; corporation; provided, however, that the internal engineering or surveying activity is not a holding out to or an offer to the public of engineering or any service thereof as prohibited by this Chapter. Engineering work, not related to the foregoing exemptions, where the safety of the public is directly involved shall be under the responsible charge of a ~~registered~~ licensed professional engineer, or in accordance with standards prepared or approved by a ~~registered~~ licensed professional engineer.

- (8) The (i) preparation of fire sprinkler planning and design drawings by a fire sprinkler contractor licensed under Article 2 of Chapter 87 of the General Statutes, or (ii) the performance of internal engineering or survey work by a manufacturing or communications common carrier company, or by a research and development company, or by employees of ~~such~~ those corporations provided that ~~such~~ the work is in connection with, or incidental to products of, or nonengineering services rendered by ~~such~~ those corporations or their affiliates.
- (9) The routine maintenance or servicing of machinery, equipment, facilities or structures, the work of mechanics in the performance of their established functions, or the inspection or supervision of construction by a foreman, superintendent, or agent of the architect or professional engineer, or services of an operational nature performed by an employee of a laboratory, a manufacturing plant, a public service corporation, or governmental operation.
- (10) The design of land application irrigation systems for an animal waste management plan, required by G.S. 143-215.10C, by a designer who exhibits, by at least three years of relevant experience, proficiency in soil science and basic hydraulics, and who is thereby listed as an Irrigation Design Technical Specialist

by the North Carolina Soil and Water Conservation Commission."

Section 24. G.S. 89C-25.1 reads as rewritten:

"§ 89C-25.1. Supervision of ~~unregistered~~ unlicensed individuals by ~~registered~~ licensed person.

In all circumstances in which ~~unregistered~~ unlicensed individuals are permitted under this Chapter to perform engineering or land surveying work, or both, under the supervision of a ~~registered~~ licensed engineer, land surveyor, or both, the Board may by regulation establish a reasonable limit on the number of ~~unregistered~~ unlicensed individuals which a ~~registrant~~ licensee of the Board may directly or personally supervise at one time."

Section 25. G.S. 89C-28 reads as rewritten:

"§ 89C-28. Existing ~~registration~~ licensure not affected.

Nothing in this Chapter shall be construed as affecting the status of ~~registration~~ licensure of any professional engineer or ~~registered~~ licensed land surveyor who is rightfully in possession of a certificate of ~~registration~~ licensure duly issued by the Board and valid as of July 1, 1975."

Section 26. This act is effective when it becomes law and applies to persons applying for licenses on or after that date and to persons practicing engineering and land surveying on or after that date.

In the General Assembly read three times and ratified this the 18th day of August, 1998.

Became law upon approval of the Governor at 12:54 p.m. on the 27th day of August, 1998.

S.B. 565

SESSION LAW 1998-119

AN ACT TO CLARIFY THE APPLICATION OF THE COMMISSIONER OF BANKS' RATE TO VARIABLE RATE LOANS WITH ADJUSTMENT PERIODS GREATER THAN ONE MONTH, TO REPEAL THE LAWS GOVERNING VARIABLE RATE LOANS OF MANUFACTURED HOMES AND INSTALLMENT RATES AND FEES, AND TO AMEND THE NORTH CAROLINA FINANCIAL PRIVACY ACT TO PERMIT THE DISCLOSURE OF THE NAME, ADDRESS, AND EXISTENCE OF AN ACCOUNT OF ANY CUSTOMER.

The General Assembly of North Carolina enacts:

Section 1. G.S. 24-1.1(c) reads as rewritten:

"(c) On the fifteenth day of each month, the Commissioner of Banks shall announce and publish the maximum rate of interest permitted by subdivision (1) of subsection (a) of this section on that date. Such rate shall be the latest published noncompetitive rate for U.S. Treasury bills with a six-month maturity as of the fifteenth day of the month plus six percent (6%), rounded upward or downward, as the case may be, to the nearest one-half of one percent (1/2 of 1%) or sixteen percent (16%), whichever is greater. If there is no nearest one-half of one percent (1/2 of 1%), the Commissioner shall round downward to the lower one-half of one percent (1/2 of 1%). The rate so announced shall be the maximum rate permitted

for the term of loans made under this section during the following calendar month when the parties to such loans have agreed that the rate of interest to be charged by the lender and paid by the borrower shall not vary or be adjusted during the term of the loan. The parties to a loan made under this section may agree to a rate of interest which shall vary or be adjusted during the term of the loan in which case the maximum rate of interest permitted on such loans during a month during the term of the loan shall be the greater of the rate announced by the Commissioner in (i) the preceding calendar month, month or (ii) the calendar month preceding that in which the rate is varied or adjusted."

Section 2. G.S. 24-1.1C and G.S. 24-1.2 are repealed.

Section 2.1. G.S. 24-1.2A reads as rewritten:

"§ 24-1.2A. *Equity lines of credit.*

(a) Notwithstanding any other provision of this Chapter, the parties to an equity line of credit, as defined in G.S. 45-81, may contract in writing for interest at rates which shall not exceed the maximum rates permitted under ~~G.S. 24-1.2(2a);~~ G.S. 24-1.1(c); provided, however, that the parties may contract for interest rates which shall be adjustable or variable, so long as for adjustable or variable rate contracts the rate in effect for a given period does not exceed the maximum rate permitted under ~~G.S. 24-1.2(2a)~~ G.S. 24-1.1(c) for the same period.

(b) Fees may be charged on equity lines of credit which in the aggregate, over the life of the contract based on the maximum limit of the line of credit, do not exceed those permitted under G.S. 24-10. Any lender may charge a party to a loan or extension of credit governed by this section a fee for the modification, renewal, extension, or amendment of any terms of the loan or extension of credit, such fee not to exceed the greater of one-quarter of one percent (1/4 of 1%) of the balance outstanding at the time of the modification, renewal, extension, or amendment of terms, or fifty dollars (\$50.00)."

Section 3. G.S. 53B-8 reads as rewritten:

"<fnt=2>§ 53B-8. Disclosure of financial records.

No financial institution or its officer, employee, or agent may disclose a customer's financial record to a government authority except as provided in this Chapter. This section does not prohibit a financial institution from giving notice of or disclosing a financial record to a government authority, as defined in G.S. 53B-2(4), to the same extent as is authorized with respect to federal government authorities in the Right to Financial Privacy Act § 1103(d), 12 U.S.C. § 3403(d). Nothing in this ~~Chapter~~ section shall prohibit a financial institution or its officer, employee or agent from disclosing, or require the disclosure of, the name, address, and existence of an account of any customer to a government authority that makes a written request stating the reason for the request. Nothing in this Chapter shall prohibit a financial institution or its officer, employee, or agent from notifying a government authority that the financial institution or its officer, employee, or agent has information that may be relevant to a possible violation of law or regulation. The information shall be limited to a description of the suspected illegal activity and the name or other identifying information concerning any individual, corporation, or account involved in

the activity. Any financial institution or its officer, employee, or agent making a disclosure of information pursuant to this section shall not be liable to the customer under the laws and rules of the State of North Carolina or any political subdivision of the State for disclosure or for failure to notify the customer of the disclosure."

Section 4. This act becomes effective October 1, 1998. and Section 1 of this act applies to variations or adjustments in rates occurring on or after that date regardless of the date on which the loan was made.

In the General Assembly read three times and ratified this the 18th day of August, 1998.

Became law upon approval of the Governor at 1:00 p.m. on the 27th day of August, 1998.

H.B. 1405

SESSION LAW 1998-120

AN ACT TO AMEND SMALL CLAIMS PROCEDURE TO CLARIFY THAT THE DISTRICT COURT HAS AUTHORITY TO HEAR CERTAIN MOTIONS FOR RELIEF FROM MAGISTRATES' JUDGMENTS, AND TO PROVIDE THAT A DISTRICT COURT JUDGE WHO WAS FORMERLY AN ASSISTANT DISTRICT ATTORNEY OF THE THIRTEENTH JUDICIAL DISTRICT MAY PERFORM THE MARRIAGE CEREMONY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 7A-228(a) reads as rewritten:

"(a) ~~With the consent of the chief district court judge, a magistrate may~~ The chief district court judge may authorize magistrates to hear motions to set aside an order or judgment for mistake or excusable neglect pursuant to G.S. 1A-1, Rule 60(b)(1) and order a new trial before a magistrate. The exercise of the authority of the chief district court judge in allowing magistrates to hear Rule 60(b)(1) motions shall not be construed to limit the authority of the district court to hear motions pursuant to Rule 60(b)(1) through (6) of the Rules of Civil Procedure for relief from a judgment or order entered by a magistrate and, if granted, to order a new trial before a magistrate. After final disposition before the magistrate, the sole remedy for an aggrieved party is appeal for trial de novo before a district court judge or a jury. Notice of appeal may be given orally in open court upon announcement or after entry of judgment. If not announced in open court, written notice of appeal must be filed in the office of the clerk of superior court within 10 days after entry of judgment. The appeal must be perfected in the manner set out in subsection (b). Upon announcement of the appeal in open court or upon receipt of the written notice of appeal, the appeal shall be noted upon the judgment. If the judgment was mailed to the parties, then the time computations for appeal of such judgment shall be pursuant to G.S. 1A-1, Rule 6."

Section 2. G.S. 51-1 reads as rewritten:

"§ 51-1. *Requisites of marriage; solemnization.*

The consent of a male and female person who may lawfully marry, presently to take each other as husband and wife, freely, seriously and

plainly expressed by each in the presence of the other, and in the presence of an ordained minister of any religious denomination, minister authorized by his church, or of a district court judge or magistrate, and the consequent declaration by such minister or officer that such persons are husband and wife, shall be a valid and sufficient marriage: Provided, that the rite of marriage among the Society of Friends, according to a form and custom peculiar to themselves, shall not be interfered with by the provisions of this Chapter: Provided further, that marriages solemnized and witnessed by a local spiritual assembly of the Baha'is, according to the usage of their religious community, shall be valid; provided further, marriages solemnized before March 9, 1909, by ministers of the gospel licensed, but not ordained, are validated from their consummation."

Section 3. This act is effective when it becomes law. Section 2 of this act shall apply only to district court judges, who were formerly assistant district attorneys of the Thirteenth Judicial District, and shall expire on July 31, 1999.

In the General Assembly read three times and ratified this the 19th day of August, 1998.

Became law upon approval of the Governor at 1:02 p.m. on the 27th day of August, 1998.

H.B. 1367

SESSION LAW 1998-121

AN ACT TO RAISE THE SALES TAX QUARTERLY THRESHOLD AND TO REPEAL THE ANNUAL WHOLESALE SALES TAX LICENSE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-164.16(b) reads as rewritten:

"(b) General Reporting Periods. -- Returns of taxpayers who are required by this subsection to report on a monthly or quarterly basis are due within 15 days after the end of each monthly or quarterly period. Returns of taxpayers who are required to report on a semimonthly basis are due within 10 days after the end of each semimonthly period.

A taxpayer who is consistently liable for less than ~~five dollars (\$50.00)~~ one hundred dollars (\$100.00) a month in State and local sales and use taxes may, with the approval of the Secretary, file a return on a quarterly basis. A taxpayer who is consistently liable for at least twenty thousand dollars (\$20,000) a month in State and local sales and use taxes shall, when directed to do so by the Secretary, file a return on a semimonthly basis. All other taxpayers shall file a return on a monthly basis. Quarterly reporting periods end on the last day of March, June, September, and December; monthly reporting periods end on the last day of the month; and semimonthly reporting periods end on the 15th of each month and the last day of each month.

The Secretary shall monitor the amount of tax remitted by a taxpayer and shall direct a taxpayer who consistently remits at least twenty thousand dollars (\$20,000) each month to file a return on a semimonthly basis. In determining the amount of tax due from a taxpayer for a reporting period the

Secretary shall consider the total amount due from all places of business owned or operated by the same person as the amount due from that person.

A taxpayer who is directed to remit sales and use taxes on a semimonthly basis but who is unable to gather the information required to submit a complete return for either the first reporting period or both the first and second semimonthly reporting periods may, upon written authorization by the Secretary, file an estimated return for that first reporting period or both periods on the basis prescribed by the Secretary. Once a taxpayer is authorized to file an estimated return for the first period or both periods, the taxpayer may continue to file an estimated return for the first or both periods until the Secretary, by written notification, revokes the taxpayer's authorization to do so. When filing a return for the second semimonthly reporting period, a taxpayer who files an estimated return for the first period but not both periods shall remit the amount of tax due for both the first and second reporting periods, less the amount ~~he~~ the taxpayer remitted with ~~his~~ the estimated return.

A taxpayer who files an estimated return for both periods is considered to have been granted an extension for both the first and second reporting periods. Notwithstanding G.S. 105-164.19, if a taxpayer who files an estimated return for both periods files a reconciling return for those periods within ten days of the due date of the return for the second period and any underpayment of estimated taxes remitted with the reconciling return is less than ten percent (10%) of the amount of taxes due for both the first and second reporting periods, no interest shall be charged. Otherwise, a taxpayer who files an estimated return for both periods shall be charged interest at the statutory rate from the due date of the return for the first reporting period to the date the reconciling return is filed."

Section 2. Part 2 of Division II of Article 5 of Chapter 105 of the General Statutes is repealed.

Section 3. G.S. 105-164.4(c) reads as rewritten:

~~"(c) Certificate of Registration. -- Any person who engages in any business for which a privilege tax is imposed by this Article shall apply for and obtain from the Secretary upon payment of fifteen dollars (\$15.00) a license to engage in and conduct the business upon the condition that the person shall pay the tax accruing to the State under this Article; the person shall thereby be duly licensed and registered to engage in the business.~~

~~A license issued under this subsection shall be a continuing license until it becomes void or is revoked for failure to comply with the provisions of this Article. A license issued under this subsection to a person, other than a person who makes only wholesale sales or only exempt sales, becomes void if, for a period of eighteen months, the license holder files no return or files returns showing no sales.~~

~~A retailer who sells tangible personal property at a flea market shall conspicuously display the retailer's sales tax license when making sales at the flea market.~~

Before a person may engage in business as a retailer or a wholesale merchant, the person must obtain a certificate of registration from the Department. To obtain a certificate of registration, a person must register with the Department and pay fifteen dollars (\$15.00).

A certificate of registration is valid unless it is revoked for failure to comply with the provisions of this Article or becomes void. A certificate issued to a retailer becomes void if, for a period of 18 months, the retailer files no returns or files returns showing no sales."

Section 4. G.S. 105-164.6(f) reads as rewritten:

~~"(f) Every retailer engaged in business in this State selling or delivering tangible personal property for storage, use, or consumption in this State shall apply for and obtain from the Secretary upon payment of fifteen dollars (\$15.00) a license to engage in and conduct the business upon the condition that the person shall pay the tax accruing to the State under this Article; the person shall thereby be duly licensed and registered to engage in the business. A license issued under this subsection shall be a continuing license until it becomes void or is revoked for failure to comply with the provisions of this Article. A license issued under this subsection to a person, other than a person who makes only wholesale sales or only exempt sales, becomes void if, for a period of 18 months, the license holder files no return or files returns showing no sales.~~

Before a person may engage in business in this State selling or delivering tangible personal property for storage, use, or consumption in this State, the person must obtain a certificate of registration from the Department. To obtain a certificate of registration, a person must register with the Department and pay fifteen dollars (\$15.00).

A certificate of registration is valid unless it is revoked for failure to comply with the provisions of this Article or becomes void. A certificate issued to a retailer becomes void if, for a period of 18 months, the retailer files no returns or files returns showing no sales."

Section 5. G.S. 105-164.4(a)(4b) reads as rewritten:

~~"(4b) A person who sells tangible personal property at a flea specialty market, other than the person's own household personal property, is considered a retailer under this Article. A tax at the general rate of tax is levied on the sales price of each article sold by the retailer at the flea specialty market. A person who leases or rents space to others at a flea market may not lease or rent this space unless the retailer requesting to rent or lease the space shows the license or a copy of the license required by this Article or other evidence of compliance. A person who leases or rents space at a flea market shall keep records of retailers who have leased or rented space at the flea market. As used in this subdivision, the term "flea market" means a place where space is rented to a person for the purpose of selling tangible personal property. The term 'specialty market' has the same meaning as defined in G.S. 66-250."~~

Section 6. G.S. 66-252 reads as rewritten:

"§ 66-252. Display and possession of ~~retail sales tax license~~. ~~certificate of registration~~.

(a) When Required. -- A person who sells tangible personal property at a specialty market, other than the person's own household personal property, is considered a retailer under G.S. 105-164.4 and must obtain a certificate of registration from the Department of Revenue before the person may

engage in business. An itinerant merchant must keep the merchant's ~~retail sales tax license~~ certificate of registration conspicuously and prominently displayed, so as to be visible for inspection by patrons of the itinerant merchant at the places or locations at which the goods are to be sold or offered for sale. A peddler must carry the peddler's ~~retail sales tax license~~ certificate of registration when the peddler offers goods for sale and must produce the license certificate upon the request of any customer, State or local revenue agent, or law enforcement agent. A specialty market vendor must keep the ~~retail sales tax license~~ certificate of registration conspicuously and prominently displayed, so as to be visible for inspection by patrons of the specialty market vendor at the places or locations at which the goods are to be sold or offered for sale. A specialty market operator must have its ~~retail sales tax license~~ certificate of registration, if any, available for inspection during all times that the specialty market is open and must produce it upon the request of any customer, State or local revenue agent, or law enforcement agent.

(b) Compliance. -- The requirement that a ~~retail sales tax license~~ certificate of registration be displayed is satisfied if the vendor displays either of the following:

- (1) A copy of the ~~license~~ certificate.
- (2) Evidence that the ~~license~~ certificate has been applied for and the applicable ~~license~~ registration fee has been paid within 30 days before the date the ~~license~~ certificate was required to be displayed."

Section 7. G.S. 66-255 reads as rewritten:

"§ 66-255. *Specialty market registration list.*

A specialty market operator must maintain a daily registration list of all specialty market vendors selling or offering goods for sale at the specialty market. The registration list must clearly and legibly show each specialty market vendor's name, permanent address, and ~~retail sales and use tax registration~~ certificate of registration number. The specialty market operator must require each specialty market vendor to exhibit a valid ~~retail sales tax license~~ certificate of registration for visual inspection by the specialty market operator at the time of registration, and must require each specialty market vendor to keep the ~~retail sales tax license~~ certificate of registration conspicuously and prominently displayed, so as to be visible for inspection by patrons of the specialty market vendor at the places or locations at which the goods are offered for sale. Each daily registration list maintained pursuant to this section must be retained by the specialty market operator for no less than two years and must at any time be made available upon request to any law enforcement officer."

Section 8. G.S. 66-257 reads as rewritten:

"§ 66-257. *Misdemeanor violations.*

(a) Class 1 Misdemeanors. -- A person who does any of the following commits a Class 1 misdemeanor:

- (1) Fails to keep a record of new merchandise and fails to produce a record or an affidavit pursuant to G.S. 66-254.
- (2) Falsifies a record of new merchandise required by G.S. 66-254.

(b) Class 2 Misdemeanors. -- A person who does any of the following commits a Class 2 misdemeanor:

- (1) If the person is an itinerant merchant or a specialty market vendor, fails to display the ~~retail sales tax license~~ certificate of registration as required by G.S. 66-252.
- (2) If the person is a specialty market operator, fails to maintain the daily registration list as required by G.S. 66-255.

(c) Class 3 Misdemeanors. -- A person who does any of the following commits a Class 3 misdemeanor:

- (1) If the person is a peddler or an itinerant merchant, fails to obtain the permission of the property owner as required by G.S. 66-251.
- (2) If the person is a peddler or a specialty market operator, fails to produce the ~~retail sales tax license~~ certificate of registration as required by G.S. 66-252.
- (3) Fails to provide name, address, or identification upon request as required by G.S. 66-253 or provides false information in response to the request.
- (4) Knowingly gives false information when registering pursuant to G.S. 66-255.

(d) Defense. -- Whenever satisfactory evidence is presented in any court of the fact that permission to use property was not displayed as required by G.S. 66-251 or that a ~~retail sales tax license~~ certificate of registration was not displayed or produced as required by G.S. 66-252, the person charged may not be found guilty of that violation if the person produces in court a valid permission or a valid ~~retail sales tax license~~, certificate of registration, respectively, that had been issued prior to the time the person was charged."

Section 9. Section 1 of this act becomes effective July 1, 1999. The remainder of this act is effective when it becomes law; Section 2 applies to taxes payable on or after July 1, 1998.

In the General Assembly read three times and ratified this the 19th day of August, 1998.

Became law upon approval of the Governor at 1:05 p.m. on the 27th day of August, 1998.

H.B. 915

SESSION LAW 1998-122

AN ACT TO PROVIDE THAT FIREFIGHTERS WHO ENGAGE IN SOME FIRE INSPECTION ACTIVITIES AS A SECONDARY RESPONSIBILITY ARE NOT COVERED BY THE LAW PROHIBITING CONFLICTS OF INTEREST BY INSPECTION DEPARTMENTS UNDER SOME CIRCUMSTANCES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 160A-415 reads as rewritten:

"§ 160A-415. *Conflicts of interest.*

No member of an inspection department or other individual contracting with a city to conduct inspections shall be financially interested or employed by a business that is financially interested in the furnishing of labor, material, or appliances for the construction, alteration, or maintenance of

any building within the city's jurisdiction or any part or system thereof, or in the making of plans or specifications therefor, unless he is the owner of the building. No member of an inspection department or other individual contracting with a city to conduct inspections shall engage in any work that is inconsistent with his that person's duties or with the interest of the city. The provisions of this section do not apply to a firefighter whose primary duties are fire suppression and rescue, but who engages in some fire inspection activities as a secondary responsibility of the firefighter's employment as a firefighter, except no firefighter may inspect any work actually done, or materials or appliances supplied, by the firefighter or the firefighter's business within the preceding six years."

Section 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 19th day of August, 1998.

Became law upon approval of the Governor at 1:07 p.m. on the 27th day of August, 1998.

S.B. 138

SESSION LAW 1998-123

AN ACT TO ALLOW AN ALTERNATIVE PROCEDURE FOR DISSOLUTION OF A SANITARY DISTRICT THAT HAS NO INDEBTEDNESS AND THE TERRITORY OF WHICH HAS BEEN ENTIRELY ANNEXED.

The General Assembly of North Carolina enacts:

Section 1. Article 2 of Chapter 130A of the General Statutes is amended by adding a new section to read:

"§ 130A-73.1. Dissolution of sanitary districts having no outstanding indebtedness and located wholly within or coterminous with corporate limits of city or town.

(a) When the boundaries of a sanitary district that (i) is located entirely within one county, (ii) has no outstanding indebtedness, (iii) at the time of its creation was not located entirely within or coterminous with the corporate limits of a city or town, (iv) has not provided any water or sewer service for at least five years, (v) did not levy any ad valorem tax in the current year, (vi) has been for at least five years entirely located within or coterminous with the corporate limits of a city or town, and (vii) at the time of the annexation of the area of the district by that city or town, the city or town assumed all assets and liabilities of the district, the board of that district by unanimous vote may petition the board of commissioners of the county in which the district is located to dissolve the district. Upon receipt of the petition, the board of commissioners shall notify the Department and the governing body of the city or town within which the district lies of the receipt of the petition. If the Commission, the county board of commissioners, and the governing body of the city or town shall deem it advisable to comply with the request of the petition, the Commission shall adopt a resolution dissolving the district. All taxes levied by the sanitary district that were levied prior to, but that are collected after, the dissolution shall vest in the city or town. All property held, owned, controlled, or used

by the sanitary district upon the dissolution or that may later be vested in the sanitary district, and all judgments, liens, rights, and causes of actions in favor of the sanitary district shall vest in the city or town. At the dissolution, taxes owed to the sanitary district shall be collected by the city or town.

(b) The procedure for the dissolution of a sanitary district set out in this section is an alternative to the procedure set out in G.S. 130A-73 and any sanitary district to which both that section and this section apply may be dissolved under either section."

Section 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 20th day of August, 1998.

Became law upon approval of the Governor at 1:09 p.m. on the 27th day of August, 1998.

S.B. 1556

SESSION LAW 1998-124

AN ACT TO EXTEND TAX-EXEMPT FINANCING UNDER THE
HIGHER EDUCATION FACILITIES FINANCE ACT TO PRIVATE
ELEMENTARY AND SECONDARY SCHOOL FACILITIES.

The General Assembly of North Carolina enacts:

Section 1 The title of Chapter 115E of the General Statutes reads as rewritten:

"Chapter 115E.

~~Higher~~ Private Educational Facilities Finance Act."

Section 2. G.S. 115E-1 reads as rewritten:

"§ 115E-1. *Short title.*

This Chapter shall be known, and may be cited, as the ~~'Higher~~ 'Private Educational Facilities Finance Act.'"

Section 3. G.S. 115E-2 reads as rewritten:

"§ 115E-2. *Legislative findings.*

It is hereby declared that for the benefit of the people of the State of North Carolina, the increase of their commerce, welfare and prosperity and the improvement of their health and living conditions it is essential that they be given the fullest opportunity to learn and to develop their intellectual capacities; that it is essential for institutions ~~of~~ for higher education and institutions for elementary and secondary education within the State to be able to construct and renovate facilities to assist its citizens in achieving the fullest development of their intellectual capacities; and that it is the purpose of this Chapter to provide a measure of assistance and an alternative method to enable private institutions ~~of~~ for higher education and institutions for elementary and secondary education in the State to provide the facilities and the structures ~~which that~~ are needed to accomplish the purposes of this Chapter, all to the public benefit and good, to the extent and in the manner provided herein.

It is hereby further declared that this purpose will benefit the people as a way to improve student learning, increase learning opportunities for all students, encourage the use of different and innovative teaching methods,

create new professional opportunities for teachers, provide parents and students with expanded choices in the types of educational opportunities that are available, and lower the overall cost of education to the State and to parents and students."

Section 4. G.S. 115E-3 reads as rewritten:

"§ 115E-3. Definitions.

As used or referred to in this Chapter, the following words and terms shall have the following meanings, unless the context clearly indicates otherwise:

- (1) "Agency" means the North Carolina Educational Facilities Finance Agency created by this Chapter, or, should said agency be abolished or otherwise divested of its functions under this Chapter, the public body succeeding it in its principal functions, or upon which are conferred by law the rights, powers and duties given by this Chapter to the agency.
- (2) "Cost", as applied to any project or any portion thereof financed under the provisions of this Chapter, means all or any part of the cost of construction, acquisition, alteration, enlargement, reconstruction and remodeling of a project, including all lands, structures, real or personal property, rights, rights-of-way, franchises, easements and interests acquired or used for or in connection with a project, the cost of demolishing or removing any buildings or structures on land so acquired, including the cost of acquiring any lands to which such buildings or structures may be moved, the cost of all machinery and equipment, financing charges, interest prior to and during construction and, if deemed advisable by the agency, for a period not exceeding two years after the estimated date of completion of construction, the cost of engineering and architectural surveys, plans and specifications, the cost of consulting and legal services and other expenses necessary or incident to determining the feasibility or practicability of constructing or equipping a project, the cost of administrative and other expenses necessary or incident to the construction or acquisition of a project and the financing of the construction or acquisition thereof, including reasonable provision for working capital and a reserve for debt service, and the cost of reimbursing any participating institution ~~for higher education~~ for any payments made for any cost described above or the refinancing of any cost described above, including any evidence of indebtedness incurred to finance such cost; provided, however, that no payment shall be reimbursed or any cost or indebtedness be refinanced if such payment was made or such cost or indebtedness was incurred ~~earlier than five years prior to the effective date of this Chapter, before November 25, 1981.~~
- (3) "Project" means any one or more buildings, structures, improvements, additions, extensions, enlargements or other facilities for use primarily as a dormitory or other housing facility, including housing facilities for student nurses, a dining hall and other food preparation and food service facilities, student

union, administration building, academic building, library, laboratory, research facility, classroom, athletic facility, health care facility, laundry facility, and maintenance, storage or utility facility and other structures or facilities related thereto or required or useful for the instruction of students or the conducting of research or the operation of an institution for higher education, education or an institution for elementary and secondary education, including parking and other facilities or structures essential or convenient for the orderly conduct of such ~~institution for higher education~~, an institution, or any combination of the foregoing, and shall also include landscaping, site preparation, furniture, equipment and machinery and other similar items necessary or convenient for the operation of an institution for higher education or an institution for elementary and secondary education or a particular facility, building or structure thereof in the manner for which its use is intended but shall not include such items as books, fuel, supplies or other items the costs of which are customarily deemed to result in a current operating charge, and shall not include any facility used or to be used for sectarian instruction or as a place of religious worship nor any facility ~~which that~~ is used or to be used primarily in connection with any part of the program of a school or department of divinity for any religious denomination.

- (4) "Bonds" or "notes" means the revenue bonds or bond anticipation notes, respectively, authorized to be issued by the agency under this Chapter, including revenue refunding bonds, notwithstanding that the same may be secured by a deed of trust or the full faith and credit of a participating institution ~~for higher education~~ or any other lawfully pledged security of a participating ~~institution for higher education~~, institution.
- (4a) "Institution for elementary and secondary education" means a nonprofit institution within the State of North Carolina authorized by law and engaged or to be engaged in the providing of kindergarten, elementary, or secondary education, or any combination thereof.
- (5) "Institution for higher education" means a nonprofit private educational institution within the State of North Carolina authorized by law to provide a program of education beyond the high school level.
- (6) ~~"Participating institution for higher education"~~ institution means an institution for higher education or an institution for elementary and secondary education that, which, pursuant to the provisions of this Chapter, undertakes the financing, refinancing, acquiring, constructing, equipping, providing, owning, repairing, maintaining, extending, improving, rehabilitating, renovating or furnishing of a project or undertakes the refunding or refinancing of obligations or of a deed of trust or a mortgage or of advances as provided in this Chapter.
- (7) "State" means the State of North Carolina."

Section 5. G.S. 115E-5 reads as rewritten:*"§ 115E-5. General powers.*

The agency shall have all of the powers necessary or convenient to carry out and effectuate the purposes and provisions of this Chapter, including, but without limiting the generality of the foregoing, the power:

- (1) To make and execute contracts and agreements necessary or incidental to the exercise of its powers and duties under this Chapter, including loan agreements and agreements of sale or leases with, mortgages and deeds of trust and conveyances to participating ~~institutions of higher education,~~ institutions, persons, firms, corporations, governmental agencies and others and including credit enhancement agreements;
- (2) To acquire by purchase, lease, gift or otherwise, or to obtain options for the acquisition of any property, real or personal, improved or unimproved, including interests in land in fee or less than fee for any project, upon such terms and at such cost as shall be agreed upon by the owner and the agency;
- (3) To arrange or contract with any county, city, town or other political subdivision or instrumentality of the State for the opening or closing of streets or for the furnishing of utility or other services to any project;
- (4) To sell, convey, lease as lessor, mortgage, exchange, transfer, grant a deed of trust in, or otherwise dispose of, or to grant options for any such purposes with respect to, any real or personal property or interest therein;
- (5) To pledge or assign any money, purchase price payments, rents, loan repayments, charges, fees or other revenues, including any federally guaranteed securities and moneys received therefrom whether such securities are initially acquired by the agency or a participating ~~institution for higher education,~~ institution, and any proceeds derived by the agency from sales of property, insurance, condemnation awards or other sources;
- (6) To pledge or assign the revenues and receipts from any project and any loan agreement, agreement of sale or lease of the loan repayments, purchase price payments, rent and income received thereunder;
- (7) To borrow money as herein provided to carry out and effectuate its corporate purposes and to issue in evidence thereof bonds and notes for the purpose of providing funds to pay all or any part of the cost of any project, to lend money to any participating ~~institution for higher education~~ for the acquisition of any federally guaranteed securities and to issue revenue refunding bonds;
- (8) To finance, refinance, acquire, construct, equip, provide, operate, own, repair, maintain, extend, improve, rehabilitate, renovate and furnish any project and to pay all or any part of the cost thereof from the proceeds of bonds or notes or from any contribution, gift or donation or other funds available to the agency for such purpose;

- (9) To fix, revise, charge and collect or cause to be fixed, revised, charged and collected purchase price payments, rents, loan repayments, fees, rates and charges for the use of, or services rendered by, any project;
- (10) To employ fiscal consultants, consulting engineers, architects, attorneys, feasibility consultants, appraisers and such other consultants and employees as may be required in the judgment of the agency and to fix and pay their compensation from funds available to the agency therefor;
- (11) To conduct studies and surveys respecting the need for projects and their location, financing and construction;
- (12) To apply for, accept, receive and agree to and comply with the terms and conditions governing grants, loans, advances, contributions, interest subsidies and other aid with respect to any project from federal and State agencies or instrumentalities;
- (13) To sue and be sued in its own name, plead and be impleaded;
- (14) To acquire and enter into commitments to acquire any federally guaranteed security or federally insured mortgage note and to pledge or otherwise use any such federally guaranteed security or federally insured mortgage note in such manner as the agency deems in its best interest to secure or otherwise provide a source of repayment on any of its bonds or notes issued on behalf of any participating institution ~~for higher education~~ to finance or refinance the cost of any project;
- (15) To make loans to any participating institution ~~for higher education~~ for the cost of a project in accordance with an agreement between the agency and the participating institution ~~for higher education~~; institution;
- (16) To make loans to a participating institution ~~for higher education~~ to refund outstanding loans, obligations, deeds of trust or advances issued, made or given by such participating institutions ~~for higher education~~ for the cost of a project;
- (17) To charge and to apportion among participating institutions ~~for higher education~~ its administrative costs and expenses incurred in the exercise of its powers and duties conferred by this Chapter;
- (18) To adopt an official seal and alter the same at pleasure; and
- (19) To do all other things necessary or convenient to carry out the purposes of this ~~chapter~~, Chapter."

Section 6. G.S. 115E-6 reads as rewritten:

"§ 115E-6. Criteria and requirements.

In undertaking any project pursuant to this Chapter, the agency shall be guided by and shall observe the following criteria and requirements; provided that the determination of the agency as to its compliance with such criteria and requirements shall be final and conclusive:

- (1) No project shall be sold or leased nor any loan made to any institution for higher education or any institution for elementary and secondary education ~~which~~ that is not financially responsible and capable of fulfilling its obligations, including its obligations under an agreement of sale or lease or a loan agreement to make

purchase price payments, to pay rent, to make loan repayments, to operate, repair and maintain at its own expense the project and to discharge such other responsibilities as may be imposed under the agreement of sale or lease or loan agreement;

- (2) Adequate provision shall be made for the payment of the principal of and the interest on the bonds and any necessary reserves therefor and for the operation, repair and maintenance of the project at the expense of the participating ~~institution for higher education; institution;~~
- (3) The public facilities, including utilities, and public services necessary for the project will be made available; and
- (4) The projects shall be operated to serve and benefit the public and there shall be no discrimination against any person based on race, creed, color or national origin."

Section 7. G.S. 115E-7 reads as rewritten:

"§ 115E-7. *Procedural requirements.*

Any institution for higher education or any institution for elementary and secondary education may submit to the agency, and the agency may consider, a proposal for financing a project using such forms and following such instructions as may be prescribed by the agency. Such proposal shall set forth the type and location of the project and may include other information and data available to the institution for higher education or the institution for elementary and secondary education respecting the project and the extent to which such project conforms to the criteria and requirements set forth in this Chapter. The agency may request the institution for higher education or the institution for elementary and secondary education to provide additional information and data respecting the project. The agency is authorized to make or cause to be made such investigation, surveys, studies, reports and reviews as in its judgment are necessary and desirable to determine the feasibility and desirability of the project, the extent to which the project will contribute to the health and welfare of the area in which it will be located, the powers, experience, background, financial condition, record of service and capability of the management of the institution for higher education or the institution for elementary and secondary education, the extent to which the project otherwise conforms to the criteria and requirements of this Chapter, and such other factors as may be deemed relevant or convenient in carrying out the purposes of this Chapter."

Section 8. G.S. 115E-8 reads as rewritten:

"§ 115E-8. *Operations of projects; agreements of sale on leases; conveyance of interest in projects.*

The agency may sell or lease any project to a participating institution ~~for higher education~~ for operation and maintenance or lend money to any participating institution ~~for higher education~~ in such manner as shall effectuate the purposes of this Chapter, under a loan agreement or an agreement of sale or lease in form and substance not inconsistent herewith. Any such loan agreement or agreement of sale or lease may include provisions that:

- (1) The participating institution ~~for higher education~~ shall, at its own expense, operate, repair and maintain the project covered by such agreement;
- (2) The purchase price payments to be made under the agreement of sale, the rent payable under the agreement of lease or the loan repayments under the loan agreement shall in the aggregate be not less than an amount sufficient to pay all of the interest, principal and any redemption premium on the bonds or notes issued by the agency to pay the cost of the project sold or leased thereunder or with respect to which the loan was made;
- (3) The participating institution ~~for higher education~~ shall pay all other costs incurred by the agency in connection with the providing of the project covered by any such agreement, except such costs as may be paid out of the proceeds of bonds or notes or otherwise, including, but without limitation, insurance costs, the cost of administering the resolution authorizing the issuance of, or any trust agreement securing, such bonds or notes and the fees and expenses of trustees, paying agents, attorneys, consultants and others;
- (4) The loan agreement or the agreement of sale or lease shall terminate not earlier than the date on which all such bonds and all other obligations incurred by the agency in connection with the project covered by any such agreement ~~shall be~~ are retired or provision for such retirement ~~shall be~~ is made; and
- (5) The obligation of the participating institution ~~for higher education~~ to make loan repayments or purchase price payments or to pay rent shall not be subject to cancellation, termination or abatement by the participating institution ~~for higher education~~ until the bonds have been retired or provision has been made for such retirement.

~~Where~~ If the agency has acquired a possessory or ownership interest in any project ~~which it has undertaken on behalf of a participating institution for higher education~~ institution, it shall promptly convey, without the payment of any consideration, all its right, title and interest in such project to such participating institution ~~for higher education~~ upon the retirement or provision for the retirement of all bonds or notes issued and obligations incurred by the agency in connection with such project."

Section 9. G.S. 115E-9 reads as rewritten:

"§ 115E-9. *Construction contracts.*

If the agency ~~shall determine~~ determines that the purposes of this ~~chapter~~ Chapter will be more effectively served, the agency in its discretion may award or cause to be awarded contracts for the construction of any project on behalf of a participating institution ~~for higher education~~ upon a negotiated basis as determined by the agency. The agency shall prescribe such bid security requirements and other procedures in connection with the award of such contracts as in its judgment shall protect the public interest. The agency may by written contract engage the services of the participating institution ~~for higher education~~ in the construction of such project and may provide in any such contract that such participating institution ~~for higher~~

~~education, institution~~, subject to such conditions and requirements consistent with the provisions of this Chapter as shall be prescribed in such contract, may act as an agent of, or an independent contractor for, the agency for the performance of the functions described therein, including the acquisition of the site and other real property for such project, the preparation of plans, specifications and contract documents, the award of construction and other contracts upon a competitive or negotiated basis, the construction of such project directly by such participating ~~institution for higher education, institution~~, the inspection and supervision of construction, the employment of engineers, architects, builders and other contractors and the provision of money to pay the cost thereof pending reimbursement by the agency. Any such contract may provide that the agency may, out of proceeds of bonds or notes, make advances to or reimburse the participating institution ~~for higher education~~ for its costs incurred in the performance of such functions, and shall set forth the supporting documents required to be submitted to the agency and the reviews, examinations and audits that shall be required in connection therewith to assure compliance with the provisions of this Chapter and such contract."

Section 10. G.S. 115E-13(a) reads as rewritten:

"(a) The agency is hereby authorized to fix and to collect fees, loan repayments, purchase price payments, rents and charges for the use of any project, and any part or section thereof, and to contract with any participating institution ~~for higher education~~ for the use thereof. The agency may require that the participating institution ~~for higher education~~ shall operate, repair or maintain such project and shall bear the cost thereof and other costs of the agency in connection therewith, all as may be provided in the agreement of sale or lease, loan agreement or other contract with the agency, in addition to other obligations imposed under such agreement or contract."

Section 11. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 20th day of August, 1998.

Became law upon approval of the Governor at 1:11 p.m. on the 27th day of August, 1998.

H.B. 1071

SESSION LAW 1998-125

AN ACT TO REQUIRE TENANTS TO PAY TO THE CLERK OF COURT THE AMOUNT OF RENT IN ARREARS TO STAY THE EXECUTION OF JUDGMENT FOR SUMMARY EJECTMENT PENDING APPEAL TO DISTRICT COURT AND TO POST A BOND FOR ANY FURTHER APPEALS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 42-34 reads as rewritten:

"§ 42-34. *Undertaking on appeal and order staying execution.*

(a) Upon appeal to the district court, either party may demand that the case be tried at the first session of the court after the appeal is docketed, but the presiding judge, in his discretion, may first try any pending case in

which the rights of the parties or the public demand it. If the case has not been previously continued in district court, the court shall continue the case for an appropriate period of time if any party initiates discovery or files a motion to allow further pleadings pursuant to G.S. 7A-220 or G.S. 7A-229, or for summary judgment pursuant to Rule 56 of the Rules of Civil Procedure.

(b) ~~It~~ During an appeal to district court, it shall be sufficient to stay execution of a judgment for ejectment ~~that if~~ the defendant appellant ~~signs~~ pays to the clerk of superior court any rent in arrears as determined by the magistrate and signs an undertaking that he or she will pay into the office of the clerk of superior court the amount of the contract rent as it becomes due periodically after the judgment was entered and, where applicable, comply with subdivision (c) below. Provided however, when the magistrate makes a finding in the record, based on evidence presented in court, that there is an actual dispute as to the amount of rent in arrears that is due and the magistrate specifies the specific amount of rent in arrears in dispute, in order to stay execution of a judgment for ejectment, the defendant appellant shall not be required to pay to the clerk of superior court the amount of rent in arrears found by the magistrate to be in dispute, even if the magistrate's judgment includes this amount in the amount of rent found to be in arrears. If a defendant appellant appeared at the hearing before the magistrate and the magistrate found an amount of rent in arrears that was not in dispute, and if an attorney representing the defendant appellant on appeal to the district court signs a pleading stating that there is evidence of an actual dispute as to the amount of rent in arrears, then the defendant appellant shall not be required to pay the rent in arrears alleged to be in dispute to stay execution of a judgment for ejectment pending appeal. Any magistrate, clerk, or district court judge shall order stay of execution upon ~~such undertaking~~, the defendant appellant's paying the undisputed rent in arrears to the clerk and signing the undertaking. If either party disputes the amount of the payment or the due date in ~~such~~ the undertaking, the aggrieved party may move for modification of the terms of the undertaking before the clerk of superior court or the district court. Upon such motion and upon notice to all interested parties, the clerk or court shall hold a hearing and determine what modifications, if any, are appropriate.

(c) In an ejectment action based upon alleged nonpayment of rent where the judgment is entered more than five working days before the day when the next rent will be due under the lease, the appellant shall make an additional undertaking to stay execution pending appeal. Such additional undertaking shall be the payment of the prorated rent for the days between the day that the judgment was entered and the next day when the rent will be due under the lease. ~~Notwithstanding, such additional undertaking shall not be required of an indigent appellant who prosecutes his appeal with an in forma pauperis affidavit that meets the requirements of G.S. 1-288.~~

(c1) Notwithstanding the provisions of subsection (b) of this section, an indigent defendant appellant, as set forth in G.S. 1-110, who prosecutes his or her appeal as an indigent and who meets the requirement of G.S. 1-288 shall pay the amount of the contract rent as it becomes periodically due as set forth in subsection (b) of this section, but shall not be required to pay

rent in arrears as set forth in subsection (b) of this section in order to stay execution pending appeal.

(d) The undertaking by the appellant and the order staying execution may be substantially in the following form:

'State of North Carolina,
'County of
'....., Plaintiff

vs.

'....., Defendant

Bond to
Stay Execution
On Appeal to
District Court

'Now comes the defendant in the above entitled action and respectfully shows the court that judgment for summary ejectment was entered against the defendant and for the plaintiff on the..... day of, 19..., by the Magistrate. Defendant has appealed the judgment to the District Court.

'Pursuant to the terms of the lease between plaintiff and defendant, defendant is obligated to pay rent in the amount of \$..... per, due on the day of each

'Where the payment of rent in arrears or an additional undertaking is required by G.S. 42-34(c), G.S. 42-34, the defendant hereby tenders \$..... to the Court as required.

'Defendant hereby undertakes to pay the periodic rent hereinafter due according to the aforesaid terms of the lease and moves the Court to stay execution on the judgment for summary ejectment until this matter is heard on appeal by the District Court.

'This the day of....., 19.....
.....
Defendant

'Upon execution of the above bond, execution on said judgment for summary ejectment is hereby stayed until the action is heard on appeal in the District Court. If defendant fails to make any rental payment to the clerk's office within five days of the due date, upon application of the plaintiff, the stay of execution shall dissolve and the sheriff may dispossess the defendant.

'This day of, 19.....
.....
Assistant Clerk of Superior Court.'

(e) Upon application of the plaintiff, the clerk of superior court shall pay to the plaintiff any amount of the rental payments paid by the defendant into the clerk's office which are not claimed by the defendant in any pleadings.

(f) If the defendant fails to make a payment within five days of the due date according to the undertaking and order staying execution, the clerk, upon application of the plaintiff, shall issue execution on the judgment for possession.

(g) When it appears by stipulation executed by all of the parties or by final order of the court that the appeal has been resolved, the clerk of court shall disburse any accrued moneys of the undertaking remaining in the clerk's office according to the terms of the stipulation or order."

Section 2. Article 3 of Chapter 42 of the General Statutes is amended by adding the following new section:

"§ 42-34.1. Rent pending execution of judgment; post bond pending appeal.

(a) If the judgment in district court is against the defendant appellant and the defendant appellant does not appeal the judgment, the defendant appellant shall pay rent to the plaintiff for the time the defendant appellant remains in possession of the premises after the judgment is given. Rent shall be prorated if the judgment is executed before the day rent would become due under the terms of the lease. The clerk of court shall disperse any rent in arrears paid by the defendant appellant in accordance with a stipulation executed by all parties or, if there is no stipulation, in accordance with the judge's order.

(b) If the judgment in district court is against the defendant appellant and the defendant appellant appeals the judgment, it shall be sufficient to stay execution of the judgment if the defendant appellant posts a bond as provided in G.S. 42-34(b). If the defendant appellant fails to perfect the appeal or the appellate court upholds the judgment of the district court, the execution of the judgment shall proceed. The clerk of court shall not disperse any rent in arrears paid by the defendant appellant until all appeals have been resolved."

Section 3. The Administrative Office of the Courts shall amend the Small Claims form entitled "Judgment In Action For Summary Ejectment" to provide for a block in the magistrate's findings to designate in accordance with G.S. 42-34(b) that either there is no actual dispute as to the amount of rent in arrears, or if there is an actual dispute of the amount of rent in arrears, the amount found to be in dispute.

Section 4. This act becomes effective October 1, 1998, and applies to actions for summary ejectment filed on or after that date.

In the General Assembly read three times and ratified this the 19th day of August, 1998.

Became law upon approval of the Governor at 5:47 p.m. on the 28th day of August, 1998.

H.B. 1462

SESSION LAW 1998-126

AN ACT TO DIRECT THE COMMISSION FOR HEALTH SERVICES TO REQUIRE THAT CERTAIN NEW SEPTIC TANK SYSTEMS INCLUDE AN EFFLUENT FILTER AND AN ACCESS DEVICE, DEVELOP STANDARDS FOR THESE FILTERS AND DEVICES, AND ADOPT THESE STANDARDS AS TEMPORARY RULES, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

The General Assembly of North Carolina enacts:

Section 1 G.S. 130A-335(f) reads as rewritten:

"(f) The rules of the Commission and the rules of the local board of health shall classify systems of wastewater collection, treatment and disposal according to size, type of treatment and any other appropriate factors. The rules shall provide construction requirements, including pretreatment and

system control requirements, standards for operation, maintenance, monitoring, reporting, and ownership requirements for each classification of systems of wastewater collection, treatment and disposal in order to prevent, as far as reasonably possible, any contamination of the land, groundwater and surface waters. The Department and local health departments may impose conditions on the issuance of permits and may revoke the permits for failure of the system to satisfy the conditions, the ~~rules~~ rules, or this Article. Permits other than improvement permits shall be valid for a period prescribed by rule. Improvement permits shall be valid upon a showing satisfactory to the Department or the local health department that the site and soil conditions are unaltered, that the facility, design wastewater flow, and wastewater characteristics are not increased, and that a wastewater system can be installed that meets the permitting requirements in effect on the date the improvement permit was issued. Improvement permits for which a plat is provided shall be valid without expiration. Improvement permits for which a site plan is provided shall be valid for five years. The period of time for which the permit is valid and a statement that the permit is subject to revocation if the site plan or plat, whichever is applicable, or the intended use changes shall be displayed prominently on both the application form for the permit and the permit.

(f1) For each septic tank system that is designed to treat 3,000 gallons per day or less of sewage, rules adopted pursuant to subsection (f) of this section shall require the use of an effluent filter to reduce the total suspended solids entering the drainfield and the use of an access device for each compartment of the septic tank to provide access to the compartment in order to facilitate maintenance of the septic tank. The Commission shall not adopt specifications for the effluent filter and access device that exceed the requirements of G.S. 130A-335.1. Neither this section nor G.S. 130A-335.1 shall be construed to prohibit the use of an effluent filter or access device that exceeds the requirements of G.S. 130A-335.1. The Department shall approve effluent filters that meet the requirements of this section, G.S. 130A-335.1, and rules adopted by the Commission."

Section 2. Article 11 of Chapter 130A of the General Statutes is amended by adding a new section to read:

"§ 130A-335.1. Effluent filters and access devices for certain septic tank systems.

(a) The manufacturer of each septic tank to be installed in this State as a part of a septic tank system that is designed to treat 3,000 gallons per day or less of sewage shall provide an effluent filter approved by the Department pursuant to the requirements of G.S. 130A-335, this section, and rules adopted by the Commission. The person who installs the septic tank system shall install the effluent filter as a part of the septic tank system in accordance with the specifications provided by the manufacturer of the effluent filter. An effluent filter shall:

- (1) Be made of materials that are capable of withstanding the corrosives to which septic tank systems are normally subject.
- (2) Prevent solid material larger than one-sixteenth of an inch, as measured along the shortest axis of the material, from entering the drainfield.

- (3) Be designed and constructed to allow for routine maintenance.
- (4) Be designed and constructed so as not to require maintenance more frequently than once in any three-year period under normally anticipated use.

(b) The access device required by G.S. 130A-335(f) shall provide access to each compartment of a septic tank for inspection and maintenance either by means of an opening in the top of the septic tank or by a riser assembly and shall include an appropriate cover. The access device shall:

- (1) Be of sufficient size to facilitate inspection and service.
- (2) Be designed and constructed to equal or exceed the minimum loading specifications applicable to the septic tank.
- (3) Prevent water entry.
- (4) Come to within six inches of the finished grade.
- (5) Be visibly marked so that the access device can be readily located."

Section 3. The Commission for Health Services shall develop standards for effluent filters and access devices for septic tank systems required under G.S. 130A-335, as amended by Section 1 of this act, and shall adopt temporary rules to implement these standards no later than 1 December 1998. Temporary rules adopted under this section become effective on 1 January 1999. The requirements of G.S. 130A-335, as amended by Section 1 of this act, and the rules adopted as required by G.S. 130A-335 and this section shall apply to any septic tank system that is designed to treat 3,000 gallons per day or less of sewage for which a permit is issued on or after 1 January 1999.

Section 4. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 19th day of August, 1998.

Became law upon approval of the Governor at 5:52 p.m. on the 28th day of August, 1998.

H.B. 1356

SESSION LAW 1998-127

AN ACT TO FACILITATE ELECTRONIC COMMERCE WITH AND BY PUBLIC AGENCIES OF THE STATE OF NORTH CAROLINA BY RECOGNIZING THE VALIDITY OF ELECTRONIC SIGNATURES AND BY AUTHORIZING THE SECRETARY OF STATE TO REGULATE ELECTRONIC SIGNATURES AND CERTIFICATION AUTHORITIES.

The General Assembly of North Carolina enacts:

Section 1. Chapter 66 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 11A.

"Electronic Commerce in Government.

"§ 66-58.1. Title; purpose.

This Article shall be known and may be cited as the Electronic Commerce Act. The purpose of this Article is to facilitate electronic commerce with

public agencies and regulate the application of electronic signatures when used in commerce with public agencies.

"§ 66-58.2. Definitions.

The following definitions apply in this Article:

- (1) 'Certification authority' means a person authorized by the Secretary to facilitate electronic commerce by vouching for the relationship between a person or public agency and that person's or public agency's electronic signature.
- (2) 'Electronic signature' means any identifier or authentication technique attached to or logically associated with an electronic record which is intended by the party using it to have the same force and effect as the party's manual signature.
- (3) 'Person' means any individual, firm, partnership, corporation, or combination thereof of whatsoever form or character.
- (4) 'Public agencies' means and includes every public office, public officer or official (State or local, elected or appointed), institution, board, commission, bureau, council, department, authority, or other unit of government of the State or of any county, unit, special district, or other political subdivision of government.
- (5) 'Secretary' means Secretary of State.
- (6) 'Transaction' means an electronic transmission of data between a person and a public agency, or between public agencies, including, but not limited to, contracts, filings, and legally operative documents.

"§ 66-58.3. Certification authority licensing.

All persons acting as a certification authority with respect to transactions under this Article shall be licensed by the Secretary prior to representing themselves or acting as a certification authority under this Article. Certification authority licensing standards set by the Secretary may include, but are not limited to, technical, physical, procedural, and personnel security controls, repository obligations, and financial responsibility standards. Upon payment of the required fees, a certification authority meeting the standards adopted by the Secretary by rule shall be licensed for a period of one year. Licenses of certification authorities complying with the standards adopted by the Secretary may be renewed for additional one-year terms upon payment of the required renewal fee.

"§ 66-58.4. Use of electronic signatures.

- (a) All public agencies may accept electronic signatures.
- (b) Signatures that require attestation by a notary public may not be in the form of an electronic signature.

"§ 66-58.5. Validity of electronic signatures.

(a) An electronic signature contained in a transaction between a person and a public agency, or between public agencies, shall have the same force and effect as a manual signature provided all of the following requirements are met:

- (1) The public agency involved in the transaction requests or requires the use of electronic signatures.
- (2) The electronic signature contained in the transaction embodies all of the following attributes:

- a. It is unique to the person using it;
- b. It is capable of certification;
- c. It is under sole control of the person using it;
- d. It is linked to data in such a manner that if the data are changed, the electronic signature is invalidated; and
- e. It conforms to rules adopted by the Secretary pursuant to this Article.

(b) A transaction between a person and a public agency, or between public agencies, is not unenforceable, nor is it inadmissible into evidence, on the sole ground that the transaction is evidenced by an electronic record or that it has been signed with an electronic signature.

"§ 66-58.6. Enforcement.

(a) The Secretary may investigate complaints or other information indicating fraudulent or unlawful conduct that violates this Article or the rules promulgated thereunder.

(b) The Superior Court Division of the General Court of Justice has jurisdiction and authority upon application of the Secretary to enjoin or restrain violations of this Article.

(c) It shall be the duty of the Attorney General, when requested, to represent the Secretary in actions or proceedings in connection with this Article.

(d) Nothing in this Article shall adversely affect any rights or the enforcement of any rights acquired by any person or public agency under any other statute or at common law with respect to matters also covered by this Article.

"§ 66-58.7. Civil penalty.

The Secretary may assess a civil penalty of not more than five thousand dollars (\$5,000) per violation against any certification authority that violates a provision of this Article or any rule promulgated thereunder. In determining the amount of a penalty under this section, the Secretary shall give due consideration to each of the following factors:

- (1) The organizational size of the certification authority cited;
- (2) The good faith of the certification authority cited;
- (3) The gravity of the violation;
- (4) The prior record of the violator in complying or failing to comply with this Article or a rule adopted pursuant to this Article; and
- (5) The risk of harm caused by the violation.

Chapter 150B of the General Statutes governs the imposition of a civil penalty under this section. A civil penalty owed under this section may be recovered in a civil action brought by the Secretary or the Attorney General.

"§ 66-58.8. Criminal penalty.

(a) Any person who willfully violates any provision of this Article, or who willfully violates any rule or order under this Article, with intent to defraud, is guilty of a Class I felony.

(b) The Secretary shall provide such evidence as is available concerning criminal violations of this Article or of any rule or order promulgated hereunder to the proper district attorney, who may, with or without such a reference, institute appropriate criminal proceedings under this Article.

(c) Nothing in this Article limits the power of the State to punish any person for any conduct which constitutes a crime by statute or common law.

"§ 66-58.9. Exemptions.

This Article shall not apply to any of the following:

- (1) Electronic signatures and facsimile signatures that are otherwise allowed by law.
- (2) The execution of documents filed with, issued, or entered by a court of the General Court of Justice. However, a document or transaction validly executed under this Article is not rendered invalid because it is filed with, or attached to, a document issued or entered by a court of the General Court of Justice.
- (3) Transactions where a public agency is not a party.

"§ 66-58.10. Rule making.

(a) The Secretary may promulgate rules under this Article. Such rules may include, but are not limited to:

- (1) Definitions, including, but not limited to, 'more technical definitions of 'certification authority' and 'electronic signature';
- (2) The creation, accreditation, bonding, licensing, operation, regulation, and sanctioning of certification authorities;
- (3) The imposition of licensing and renewal fees in amounts not to exceed five thousand dollars (\$5,000) per year; and
- (4) The imposition of civil monetary penalties for noncompliance with this Article or the rules promulgated thereunder.

(b) Notwithstanding G.S. 150B-21.1(a), the Secretary may adopt temporary rules to implement the certification authority technology provisions of this Article using the procedure for adoption of temporary rules under G.S. 150B-21.1(a2).

(c) The Secretary shall deposit licensing and renewal fees in the General Fund.

"§ 66-58.11. Reciprocal agreements.

The Secretary is hereby authorized to enter into reciprocal arrangements with appropriate and duly authorized public agencies of other jurisdictions having a law substantially similar to this Article so as to further the purpose of this Article."

Section 2. G.S. 150B-21.1 is amended by adding a new subsection to read:

"(a2) Notwithstanding the provisions of subsection (a) of this section, the Secretary of State may adopt temporary rules to implement the certification technology provisions of Article 11A of Chapter 66 of the General Statutes. After having the proposed temporary rule published in the North Carolina Register and at least 30 days prior to adopting a temporary rule pursuant to this subsection, the Secretary shall:

- (1) Notify persons on its mailing list maintained pursuant to G.S. 150B-21.2(d) and any other interested parties of its intent to adopt a temporary rule;
- (2) Accept oral and written comments on the proposed temporary rule; and
- (3) Hold at least one public hearing on the proposed temporary rule.

When the Secretary adopts a temporary rule pursuant to this subsection, the Secretary must submit a reference to this subsection as the Secretary's statement of need to the Codifier of Rules.

Notwithstanding any other provision of this Chapter, the Codifier of Rules shall publish in the North Carolina Register a proposed temporary rule received from the Secretary in accordance with this subsection."

Section 3. In developing initial rules pursuant to this act, the Secretary shall consider national standards for ensuring the integrity of electronic signatures and shall seek the advice of public and private agencies, including, but not limited to, the Information Resource Management Commission and the North Carolina Electronics and Information Technologies Association. Before adoption of the rules, the Secretary shall hold at least one public hearing to receive comments.

Section 4. The Legislative Research Commission shall study whether the scope of Article 11A of Chapter 66 of the General Statutes should be expanded to include electronic commerce not involving a public agency. The Commission shall report its recommendations to the 1999 General Assembly.

Section 5. Section 1 of this act becomes effective January 1, 1999. The remainder of this act is effective when it becomes law. The Secretary of State may adopt rules prior to January 1, 1999, to become effective on or after January 1, 1999, to implement Section 1 of this act.

In the General Assembly read three times and ratified this the 20th day of August, 1998.

Became law upon approval of the Governor at 8:50 p.m. on the 31st day of August, 1998.

H.B. 1094

SESSION LAW 1998-128

AN ACT TO REPEAL OBSOLETE OR PREEMPTED PROVISIONS OF THE GENERAL STATUTES AFFECTING RAILROADS, TO RECODIFY CERTAIN RAILROAD STATUTES, AND TO MAKE CONFORMING CHANGES AND CLARIFYING CHANGES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 62-3(6) reads as rewritten:

"(6) 'Common carrier' means any ~~person~~ person, other than a carrier by rail, which holds itself out to the general public to engage in transportation of persons or household goods for compensation, including transportation by ~~train~~, bus, truck, boat or other conveyance, except as exempted in G.S. 62-260."

Section 2. G.S. 62-3(22) reads as rewritten:

"(22) 'Private carrier' means any ~~person~~ person, other than a carrier by rail, not included in the definitions of common carrier, which transports in intrastate commerce in its own vehicle or vehicles property of which such person is the owner, lessee, or bailee, when such transportation is for the purpose of sale, lease, rent, or bailment, or when such transportation is purely an incidental adjunct to some other established private business

owned and operated by such person other than the transportation of household goods for compensation."

Section 3. G.S. 62-3(23)a. reads as rewritten:

"(23) a. 'Public utility' means a person, whether organized under the laws of this State or under the laws of any other state or country, now or hereafter owning or operating in this State equipment or facilities for:

1. Producing, generating, transmitting, delivering or furnishing electricity, piped gas, steam or any other like agency for the production of light, heat or power to or for the public for compensation; provided, however, that the term 'public utility' shall not include persons who construct or operate an electric generating facility, the primary purpose of which facility is for such person's own use and not for the primary purpose of producing electricity, heat, or steam for sale to or for the public for compensation;
2. Diverting, developing, pumping, impounding, distributing or furnishing water to or for the public for compensation, or operating a public sewerage system for compensation; provided, however, that the term 'public utility' shall not include any person or company whose sole operation consists of selling water to less than 15 residential customers, except that any person or company which constructs a water system in a subdivision with plans for 15 or more lots and which holds itself out by contracts or other means at the time of said construction to serve an area containing more than 15 residential building lots shall be a public utility at the time of such planning or holding out to serve such 15 or more building lots, without regard to the number of actual customers connected;
3. Transporting persons or household goods by street, suburban or interurban bus ~~or railways~~ for the public for compensation;
4. Transporting persons or household goods by ~~railways or motor vehicles,~~ vehicles or any other form of transportation for the public for compensation, except motor carriers exempted in G.S. 62-260, ~~and except carriers by rail, and carriers by air;~~
5. Transporting or conveying gas, crude oil or other fluid substance by pipeline for the public for compensation;
6. Conveying or transmitting messages or communications by telephone or telegraph, or any other means of transmission, where such service is offered to the public for compensation."

Section 4. G.S. 62-133(h) is repealed.

Section 5. G.S. 62-150 reads as rewritten:

"§ 62-150. *Ticket may be refused intoxicated person; penalty for prohibited entry.*

The ticket agent of any common carrier of passengers shall at all times have power to refuse to sell a ticket to any person applying for the same who may at the time be intoxicated. The ~~conductor~~, driver or other person in charge of any conveyance for the use of the traveling public shall at all times have power to prevent any intoxicated person from entering such conveyance. If any intoxicated person, after being forbidden by the ~~conductor~~, driver or other person having charge of any such conveyance for the use of the traveling public, shall enter such conveyance, he shall be guilty of a Class 1 misdemeanor."

Section 6. G.S. 62-151 reads as rewritten:

"§ 62-151. *Passenger refusing to pay fare or violating rules may be ejected.*

If any passenger shall refuse to pay his fare, or be or become intoxicated, or violate the rules of a common carrier, it shall be lawful for the ~~conductor~~ or driver of the ~~train or bus~~, bus or other conveyance, and servants of the carrier, on stopping the conveyance, to put him and his baggage out of the conveyance, using no unnecessary force."

Section 7. G.S. 62-152.1(a)(2) reads as rewritten:

"(2) For purposes of this section, ~~carriers by rail are carriers of the same class~~, carriers by motor vehicles are carriers of the same class, carriers by pipeline are carriers of the same class, carriers by water are carriers of the same class, carriers by air are carriers of the same class, and freight forwarders are carriers of the same class."

Section 8. G.S. 62-190(a) reads as rewritten:

"(a) Any pipeline company transporting or conveying natural gas, gasoline, crude oil, coal in suspension, or other fluid substances by pipeline for the public for compensation, and incorporated under the laws of the State, or foreign corporations domesticated under the laws of North Carolina, may exercise the right of eminent domain under the provisions of the Chapter, Eminent Domain, and for the purpose of constructing and maintaining its pipelines and other works shall have all the rights and powers given ~~railroads and~~ other corporations by this Chapter and acts amendatory thereof. Nothing herein shall prohibit any such pipeline company granted the right of eminent domain under the laws of this State from extending its pipelines from within this State into another state for the purpose of transporting natural gas or coal in suspension into this State, nor to prohibit any such pipeline company from conveying or transporting natural gas, gasoline, crude oil, coal in suspension, or other fluid substances from within this State into another state. All such pipeline companies shall be deemed public utilities and shall be subject to regulation under the provisions of this Chapter."

Section 9. G.S. 62-200(b) reads as rewritten:

"(b) Any common carrier violating any of the provisions of this section shall forfeit to the party aggrieved the sum of ~~fifteen dollars (\$15.00) for the first day and two dollars (\$2.00) for each succeeding day of such unlawful detention or neglect where such shipment is made in carload lots, and in less quantities there shall be a forfeiture in like manner of ten dollars~~

(\$10.00) for the first day and one dollar (\$1.00) for each succeeding ~~day,~~
day of such unlawful detention or neglect, but the forfeiture shall not be
 collected for a period exceeding 30 days."

Section 10. G.S. 62-300(a) reads as rewritten:

"(a) The Commission shall receive and collect the following fees and charges in accordance with the classification of utilities as provided in rules and regulations of the Commission, and no others:

- (1) Twenty-five dollars (\$25.00) with each notice of appeal to the Court of Appeals or the Supreme Court, and with each notice of application for a writ of certiorari.
- (2) With each application for a new certificate for motor ~~and rail~~ carrier rights, the fee shall be two hundred fifty dollars (\$250.00) when filed by Class 1 motor ~~and rail~~ carriers, one hundred dollars (\$100.00) when filed by Class 2 motor ~~and rail~~ carriers, and twenty-five dollars (\$25.00) when filed by Class 3 motor ~~and rail~~ carriers, and twenty-five dollars (\$25.00) as filing fee for any amendment thereto so as to extend or enlarge the scope of operations thereunder, and twenty-five dollars (\$25.00) for each broker who applies for a brokerage license under the provisions of this Chapter.
- (3) With each application for a general increase in rates, fares and charges and for each filing of a tariff which seeks general increases in rates, fares and charges, the fee will be five hundred dollars (\$500.00) for Class A utilities and Class 1 motor ~~and rail~~ carriers, two hundred fifty dollars (\$250.00) for Class B utilities and Class 2 motor ~~and rail~~ carriers, one hundred dollars (\$100.00) for Class C utilities and twenty-five dollars (\$25.00) for Class D utilities and Class 3 motor ~~and rail~~ carriers; provided that in the case of an application or tariff for a general increase in rates filed by a tariff agent for more than one carrier, the applicable fee shall be the highest fee prescribed for any motor carrier included in the application or tariff. This fee shall not apply to applications for adjustments in particular rates, fares, or charges for the purpose of eliminating inequities, preferences or discriminations or to applications to adjust rates and charges based solely on the increased cost of fuel used in the generation or production of electric power.
- (4) One hundred dollars (\$100.00) with each application by motor carrier of passengers for the abandonment or permanent or temporary discontinuance of transportation service previously authorized in a certificate.
- ~~(4a) Two hundred fifty dollars (\$250.00) with each application for discontinuance of train service, or for a change in or discontinuance of station facilities.~~
- (5) With each application for a certificate of public convenience and necessity or for any amendment thereto so as to extend or enlarge the scope of operations thereunder, the fee shall be two hundred fifty dollars (\$250.00) for Class A utilities, one hundred dollars (\$100.00) for Class B utilities, and twenty-five dollars (\$25.00)

- for Class C and D utilities and twenty-five dollars (\$25.00) for any other person seeking a certificate of public convenience and necessity.
- (5a) With each application by a bus company for an original certificate of authority or for any amendment thereto or to an existing certificate of public convenience and necessity so as to extend or enlarge the scope of operations thereunder the fee shall be two hundred fifty dollars (\$250.00).
 - (6) With each application for approval of the issuance of securities or for the approval of any sale, lease, hypothecation, lien, or other transfer of any household goods or operating rights of any carrier or public utility over which the Commission has jurisdiction, the fee shall be two hundred fifty dollars (\$250.00) for Class A utilities and Class 1 motor ~~and rail~~ carriers, one hundred dollars (\$100.00) for Class B utilities and Class 2 motor ~~and rail~~ carriers, and twenty-five dollars (\$25.00) for Class C and D utilities and Class 3 motor ~~and rail~~ carriers; provided, that in the case of sales, leases and transfers between two or more carriers or utilities, the applicable fee shall be the highest fee prescribed for any party to the transaction.
 - (7) Ten dollars (\$10.00) with each application, petition, or complaint not embraced in (2) through (6) of this section, wherein such application, petition, or complaint seeks affirmative relief against a carrier or public utility over which the Commission has jurisdiction. This fee shall not apply to applications for adjustments in particular rates, fares or charges for the purpose of eliminating inequities, preferences or discriminations; nor shall this fee apply to applications, petitions, or complaints made by any county, city or town; nor shall this fee apply to applications or petitions made by individuals seeking service or relief from a public utility.
 - (8) Repealed by Session Laws 1985, c. 454, s. 18.
 - (9) One dollar (\$1.00) for each page (8 1/2 x 11 inches) of transcript of testimony, but not less than five dollars (\$5.00) for any such transcript.
 - (10) Twenty cents (20¢) for each page of copies of papers, orders, certificates or other records, but not less than one dollar (\$1.00) for any such order or record, plus five dollars (\$5.00) for formal certification of any such paper, order or record.
 - (11), (12) Repealed by Session Laws 1985, c. 454, s. 18.
 - (13) Two hundred fifty dollars (\$250.00) with each application for a certificate of public convenience and necessity to construct a transmission line.
 - (14) Twenty-five dollars (\$25.00) with each filing by a person otherwise exempt from Commission regulation under Public Law 103-305 to participate in standard transportation practices as set out by the Commission.

- (15) One hundred dollars (\$100.00) for each application for exemption filed by nonprofit and consumer-owned water or sewer utilities pursuant to G.S. 62-110.5."

Section 11. G.S. 160A-195 is repealed.

Section 12. Chapter 14 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 61.

"Trains and Railroads.

"§ 14-460. Riding on train unlawfully.

If any person, with the intention of being transported free in violation of law, rides or attempts to ride on top of any car, coach, engine, or tender, on any railroad in this State, or on the drawheads between cars, or under cars, on truss rods, or trucks, or in any freight car, or on a platform of any baggage car, express car, or mail car on any train, he shall be guilty of a Class 3 misdemeanor.

"§ 14-461. Unauthorized manufacture or sale of switch-lock keys a misdemeanor.

It shall be unlawful for any person to make, manufacture, sell, or give away to any other person any duplicate key to any lock used by any railroad company in this State on its switches or switch tracks, except upon the written order of that officer of such railroad company whose duty it is to distribute and issue switch-lock keys to the employees of such railroad company. Any person violating the provisions of this section shall be guilty of a Class 1 misdemeanor."

Section 13. G.S. 62-152, 62-192, 62-207, 62-221, 62-222, 62-227, 62-228, 62-229, 62-230, 62-231, 62-232, 62-233, 62-234, 62-238, 62-238.1, 62-239, 62-241, 62-242, 62-243, 62-244, 62-245, 62-246, and 62-247 are repealed.

Section 14. Article 11 of Chapter 62 of the General Statutes, as amended by Section 13 of this act, G.S. 62-220, 62-223, 62-224, 62-225, 62-226, 62-237, and 62-240, is recodified as Article 15 of Chapter 136 of the General Statutes, G.S. 136-190 through G.S. 136-196.

Section 15. G.S. 62-237, recodified as G.S. 136-195 by Section 14 of this act, reads as rewritten:

"§ 136-195. To regulate crossings and to abolish grade crossings.

The ~~Commission~~ Department may require the raising or lowering of any tracks or roadway at any grade crossing in a road or street not forming a link in or part of the State highway system and designate who shall pay for the same by partitioning the cost of said work and the maintenance of such crossing among the railroads and municipalities interested in accordance with the formula provided for grade crossing alterations or eliminations on the State highway system in G.S. 136-20(b)."

Section 16. Article 15 of Chapter 136 of the General Statutes, as enacted by this act, is amended by adding two new sections to read:

"§ 136-197. Ticket may be refused intoxicated person; penalty for prohibited entry.

The ticket agent of a passenger train shall at all times have the power to refuse to sell a ticket to a person wanting to purchase a ticket who may at the time be intoxicated. The conductor in charge of the train shall at all

times have the power to prevent an intoxicated person from boarding the train. An intoxicated person who boards a train after being forbidden by the conductor to do so is guilty of a Class 1 misdemeanor.

"§ 136-198. Passenger refusing to pay fare or violating rules may be ejected.

If a passenger shall refuse to pay the fare, be or become intoxicated, or violate the rules of a passenger train, it shall be lawful for the conductor of the train to stop the train at any station or at any regular stop, and to put the passenger and the passenger's baggage out of the train, using no unnecessary force."

Section 17. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 26th day of August, 1998.

Became law upon approval of the Governor at 3:40 p.m. on the 4th day of September, 1998.

S.B. 1269

SESSION LAW 1998-129

AN ACT TO EXTEND BY ONE YEAR THE DATE BY WHICH WELL CONTRACTORS MUST BE CERTIFIED UNDER THE NORTH CAROLINA WELL CONTRACTORS CERTIFICATION ACT AND TO EXTEND THE TIME FOR THE ADOPTION OF RULES BY THE WELL CONTRACTORS CERTIFICATION COMMISSION, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. Section 11 of S.L. 1997-358 reads as rewritten:

"Section 11. Sections 1, 3, 4, and 7 through 11 of this act are effective when they become law. Section 2 of this act is effective when it becomes law except that G.S. 87-98.4(a) and G.S. 87-98.12, as enacted by Section 2 of this act, become effective 1 January ~~1999~~, 2000. Section 5 of this act becomes effective 1 July 1997. Section 6 of this act becomes effective 1 January ~~1999~~, 2000."

Section 2. Notwithstanding G.S. 150B-21.1(a)(2) and 26 NCAC 2C.0102(11), the Well Contractors Certification Commission may adopt temporary rules to implement S.L. 1997-358 until 1 July 1999.

Section 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 24th day of August, 1998.

Became law upon approval of the Governor at 3:42 p.m. on the 4th day of September, 1998.

H.B. 1533

SESSION LAW 1998-130

AN ACT TO ENABLE THE COUNTY OF HALIFAX, THE COUNTY OF NORTHAMPTON, AND THE CITY OF ROANOKE RAPIDS TO ESTABLISH AN AIRPORT AUTHORITY FOR THE MAINTENANCE OF REGIONAL AIRPORT FACILITIES.

The General Assembly of North Carolina enacts:

Section 1. Section 1 of S.L. 1997-275 reads as rewritten:

"Section 1. There is hereby created the '~~Halifax-Roanoke Rapids~~ Halifax Regional Airport Authority' (for brevity hereinafter referred to as the 'Airport Authority'), which shall be a body both corporate and politic, having the powers and jurisdiction hereinafter enumerated and such other and additional powers as shall be conferred upon it by general law and future acts of the General Assembly. For purposes of this act the word 'City' when used alone shall mean the City of Roanoke Rapids and the word 'County' when used alone shall mean either Halifax County or Northampton County."

Section 2. Section 2 of S.L. 1997-275 reads as rewritten:

"Section 2. The Airport Authority shall consist of ~~seven~~ nine members, ~~three~~ two of whom shall be appointed to staggered three-year terms by the Roanoke Rapids City ~~Council~~ Council, two of whom shall be appointed to staggered three-year terms by the Northampton County Board of Commissioners, and ~~three~~ four of whom shall be appointed to staggered three-year terms by the Halifax County Board of ~~Commissioners~~ Commissioners, and one of whom shall be appointed by the other ~~six~~ eight members of the Airport Authority. The members appointed by the Roanoke Rapids City Council shall be qualified voters of the City of Roanoke Rapids, the members appointed by the Northampton County Board of Commissioners shall be qualified voters of the County of Northampton, and the members appointed by the Halifax County Board of Commissioners ~~and the Airport Authority~~ shall be qualified voters of the County of Halifax. Each member appointed from Halifax County shall take and subscribe before the Clerk of Superior Court of Halifax County an oath of ~~office and~~ office. Each member appointed from Northampton County shall take and subscribe before the Clerk of Superior Court of Northampton County an oath of office. They shall file the same with the Halifax County Board of ~~Commissioners~~ Commissioners, the Northampton County Board of Commissioners, and the Roanoke Rapids City Council. Membership on the Halifax County Board of ~~Commissioners~~ Commissioners, the Northampton County Board of Commissioners, or the Roanoke Rapids City Council and the Airport Authority shall not constitute double office holding within the meaning of Article VI, Section 9 of the Constitution of North Carolina."

Section 3. Section 3 of S.L. 1997-275 reads as rewritten:

"Section 3. The Airport Authority may adopt suitable bylaws for its management. The members of the Airport Authority ~~shall~~ may receive compensation, per diem, or otherwise as the Roanoke Rapids ~~City Council~~ or Council, the Halifax County Board of ~~Commissioners~~ Commissioners, or the Northampton County Board of Commissioners from time to time determines and be paid their actual traveling expenses incurred in transacting the business and at the instance of the Airport Authority. Members of the Airport Authority shall not be personally liable for their acts as members of the Airport Authority, except for acts resulting from misfeasance or malfeasance."

Section 4. Subsection (a) of Section 4 of S.L. 1997-275 reads as rewritten:

"(a) The Airport Authority shall constitute a body, both corporate and politic, and shall have the following powers and authority:

- (1) To purchase, acquire, establish, construct, own, control, lease, equip, improve, maintain, operate, and regulate airports and landing fields for the use of airplanes and other aircraft within the limits of the County and for this purpose to purchase, improve, own, hold, lease, or operate real or personal property. The Airport Authority may exercise these powers alone or in conjunction with the City of Roanoke ~~Rapids~~ Rapids, the County of Northampton, or the County of Halifax.
- (2) To sue and be sued in the name of the Airport Authority, to make contracts and hold any personal property necessary for the exercise of the powers of the Airport Authority, and acquire by purchase, lease, or otherwise any existing lease, leasehold right, or other interest in any existing airport located in the County.
- (3) To charge and collect reasonable and adequate fees and rents for the use of airport property or for services rendered in the operation of the airport.
- (4) To make all reasonable rules and regulations it deems necessary for the proper maintenance, use, operation, and control of the airport and provide penalties for the violation of these rules and regulations; provided, the rules and regulations and schedules of fees not be in conflict with the laws of North Carolina, and the regulations of the Federal Aviation Administration. The Airport Authority may administer and enforce any airport zoning regulations adopted by the City of Roanoke ~~Rapids~~ Rapids, the County of Northampton, or the County of Halifax.
- (5) To issue bonds pursuant to Article 5 of Chapter 159 of the General Statutes.
- (6) To sell, lease, or otherwise dispose of any property, real or personal, belonging to the Airport Authority, according to the procedures described in Article 12 of Chapter 160A of the General Statutes, but no sale of real property shall be made without the approval of the Halifax County Board of ~~Commissioners~~ Commissioners, the Northampton County Board of ~~Commissioners~~ Commissioners, and the Roanoke Rapids City Council.
- (7) To purchase any insurance that the Federal Aviation Administration or the Airport Authority shall deem necessary. The Airport Authority shall be responsible for any and all insurance claims or liabilities.
- (8) To deposit or invest and reinvest any of its funds as provided by the Local Government Finance Act, as it may be amended from time to time, for the deposit or investment of unit funds.
- (9) To purchase any of its outstanding bonds or notes.
- (10) To operate, own, lease, control, regulate, or grant to others, for a period not to exceed 25 years, the right to operate on any airport premises restaurants, snack bars, vending machines, food and beverage dispensing outlets, rental car services, catering services, novelty shops, insurance sales, advertising media,

merchandising outlets, motels, hotels, barber shops, automobile parking and storage facilities, automobile service establishments, and all other types of facilities as may be directly or indirectly related to the maintenance and furnishing to the general public of a complete air terminal installation.

- (11) To contract with persons, firms, or corporations for terms not to exceed 25 years, for the operation of airline-scheduled passenger and freight flights, nonscheduled flights, and any other airplane activities not inconsistent with the grant agreements under which the airport property is held.
- (12) To erect and construct buildings, hangars, shops, and other improvements and facilities, not inconsistent with or in violation of the agreements applicable to and the grants under which the real property of the airport is held; to lease these improvements and facilities for a term or terms not to exceed 25 years; to borrow money for use in making and paying for these improvements and facilities, secured by and on the credit only of the lease agreements in respect to these improvements and facilities, and to pledge and assign the leases and lease agreements as security for the authorized loans.
- (13) Subject to the limitations set out in this act, to have all the same power and authority granted to cities and counties pursuant to Chapter 63 of the General Statutes, Aeronautics.
- (14) To have a corporate seal, which may be altered at will."

Section 5. Section 8 of S.L. 1997-275 reads as rewritten:

"Section 8. The Airport Authority shall make an annual report to the Halifax County Board of Commissioners, Commissioners, the Northampton County Board of Commissioners, and the Roanoke Rapids City Council setting forth in detail the operations and transactions conducted by it pursuant to this act. The Airport Authority shall not have the power to pledge the credit of Halifax County, County, Northampton County, or the City of Roanoke Rapids, or any subdivision thereof, or to impose any obligation on Halifax County, County, Northampton County, or the City of Roanoke Rapids, or any of their subdivisions, except when that power is expressly granted by statute."

Section 6. Section 9 of S.L. 1997-275 reads as rewritten:

"Section 9. Subject to the limitations as set out in this act, all rights and powers given and granted to counties or municipalities by general law, which may now be in effect or enacted in the future relating to the development, regulation, and control of municipal airports and the regulation of aircraft are vested in the Airport Authority. The Halifax County Board of Commissioners, Commissioners, the Northampton County Board of Commissioners, or the Roanoke Rapids City Council may delegate their powers under these acts to the Airport Authority, and the Airport Authority shall have concurrent rights with Halifax County, County, Northampton County, and the City of Roanoke Rapids to control, regulate, and provide for the development of aviation in Halifax County, County and Northampton County."

Section 7. Section 12 of S.L. 1997-275 reads as rewritten:

"Section 12. The Halifax County Board of ~~Commissioners~~ Commissioners, the Northampton County Board of Commissioners, or the Roanoke Rapids City Council may appropriate funds derived from any source including ad valorem taxes to carry out the provisions of this act in any proportion or upon any basis as may be determined by the Halifax County Board of ~~Commissioners~~ Commissioners, the Northampton County Board of Commissioners, or the Roanoke Rapids City Council."

Section 8. Section 15 of S.L. 1997-275 reads as rewritten:

"Section 15. The powers granted to the Airport Authority shall not be effective until the members of the Airport Authority have been appointed by the Halifax County Board of ~~Commissioners~~ Commissioners, the Northampton County Board of Commissioners, and the Roanoke Rapids City Council, and nothing in this act shall require the Board of Commissioners or City Council to make the initial appointments. It is the intent of this act to enable but not to require the formation of the ~~Halifax-Roanoke Rapids~~ Halifax Regional Airport Authority."

Section 9. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 8th day of September, 1998.

Became law on the date it was ratified.

H.B. 1477

SESSION LAW 1998-131

AN ACT TO IMPLEMENT THE RECOMMENDATIONS OF THE LEGISLATIVE COMMISSION ON PUBLIC SCHOOLS TO MAKE CHANGES IN LAWS, POLICIES, AND ADMINISTRATION TO IMPROVE THE QUALITY OF EDUCATION AND SAFETY IN THE STATE RESIDENTIAL SCHOOLS, TO IMPLEMENT THE ABC'S PROGRAM IN THE RESIDENTIAL SCHOOLS, TO AUTHORIZE STUDIES OF ISSUES OF CONCERN TO BLIND AND DEAF STUDENTS, TO REQUIRE AN AUDIT OF THE DIVISION OF SERVICES FOR THE DEAF AND HARD OF HEARING, AND TO REQUIRE THE DEVELOPMENT OF A THREE-YEAR PLAN TO ADDRESS THE CAPITAL NEEDS OF THE GOVERNOR MOREHEAD SCHOOL AND THE THREE STATE SCHOOLS FOR THE DEAF.

The General Assembly of North Carolina enacts:

Section 1. The Secretary of Health and Human Services shall make changes in the structure and functions of the State residential schools with a view to improving student performance, increasing flexibility and control, and promoting economy and efficiency. The Secretary shall begin with the Governor Morehead School and the three schools for the deaf. The Secretary may, in his discretion, make changes in the structure and functions of the other residential schools. In carrying out the changes, the Secretary shall consider ways to reorder priorities and place greater emphasis on the basics - reading, communication skills, and mathematics - in the areas of staff development, the State testing program, program accreditation, the use of instructional funds, the instructional program, and

other components of the education program offered at the residential schools. The Secretary also shall consider the impact the changes will have on the mission of the State's residential schools and the mission of the Department of Health and Human Services as it pertains to the residential schools.

The Secretary shall make a preliminary report to the Legislative Commission on Public Schools and to the cochairs of the Appropriations Subcommittee on Health and Human Services of the Senate and the House of Representatives by November 1, 1998, and a final report by November 1, 1999, on the results of these changes. The reports shall include any proposed legislation necessary to implement the additional changes.

Section 2. Effective March 1, 1998, the Secretary of Health and Human Services also shall make changes in the administrative organization of the Department of Health and Human Services and of the Governor Morehead School and the three schools for the deaf with a view to (i) improving student academic performance in the residential schools, (ii) promoting economy and efficiency in government in the interest of producing cost savings that can be used to redirect funds to the residential schools for teaching, textbooks, school supplies, technology, equipment, and staff development, and (iii) increasing school-based decision making and parental involvement. The Secretary may, in his discretion, extend this section to additional residential programs. The Secretary shall make necessary changes in the mission of the residential schools and of the Department of Health and Human Services as it pertains to the residential schools. The Secretary shall develop a plan for reducing, eliminating, and/or reorganizing the Department of Health and Human Services and each residential school. A reorganization may include the assignment or reassignment of the Department's duties and functions among divisions and other units, division heads, officers, and employees.

The proposed reduction, elimination, and/or reorganization of the Department shall have a goal of resulting in a decrease of at least fifty percent (50%) in the number of employee positions currently assigned to the Division of Services for the Blind and the Division of Services for the Deaf and Hard of Hearing for the purpose of providing assistance to, management of, or education programs in the residential schools, and a redirection to the instructional programs in the residential schools by January 1, 1999, of at least fifty percent (50%) in the Department's budget that currently is maintained by the Department to administer the residential schools and their programs. The proposed reduction, elimination, and/or reorganization of the residential schools shall have a goal of resulting in a decrease of at least fifty percent (50%) in the number of employee positions currently filled by administrators or supervisors.

The Secretary shall report to the Legislative Commission on Public Schools and to the cochairs of the Appropriations Subcommittee on Health and Human Services of the Senate and the House of Representatives by December 15, 1998, on the reduction, elimination, and/or reorganization plan it develops.

Section 3. The Secretary of Health and Human Services shall consult with the State Board of Education in its implementation of this act as it

pertains to improving the educational programs at the residential schools. The Secretary also shall fully inform and consult with the chairs of the Appropriations Subcommittees on Education and Health and Human Services of the Senate and the House of Representatives on a regular basis as the Secretary carries out his duties under this act.

Section 4. If funds are appropriated to the Department of Health and Human Services in the Current Operations and Capital Improvements Appropriations Act of 1998 to implement this act, then of these funds the sum of three hundred thousand dollars (\$300,000) for the 1998-99 fiscal year shall be used to contract for outside consultants and assistance to assist the Secretary in carrying out his duties under this act. The Office of State Budget and Management, the State Auditor, and other appropriate State agencies also shall provide consultation as requested by the Secretary as needed to develop the plans set out in this act.

Section 5. Article 3 of Chapter 143B of the General Statutes is amended by adding the following new Part to read:

"Part 3A. Education Programs in Residential Schools.

"§ 143B-146.1. Mission of schools; definitions.

(a) It is the intent of the General Assembly that the mission of the residential school community is to challenge with high expectations each child to learn, to achieve, and to fulfill his or her potential.

(b) The following definitions apply in this Part:

- (1) ABC's Program or Program. -- The School-Based Management and Accountability Program developed by the State Board.
- (2) Department. -- The Department of Health and Human Services.
- (3) Instructional personnel. -- Principals, assistant principals, teachers, instructional personnel, instructional support personnel, and teacher assistants employed in a residential school.
- (4) Participating school. -- A residential school that is required to participate in the ABC's Program.
- (5) Residential school personnel. -- The individuals included in G.S. 143B-146.16(a)(2).
- (6) Schools. -- The residential schools under the control of the Secretary.
- (7) Secretary. -- The Secretary of Health and Human Services.
- (8) State Board. -- The State Board of Education.
- (9) Superintendent. -- The individual designated by the Secretary to administer a residential school.

"§ 143B-146.2. ABC's Program in residential schools.

(a) The Governor Morehead School and the three schools for the deaf shall participate in the ABC's Program. The Secretary, in consultation with the General Assembly and the State Board, may designate other residential schools that must participate in the ABC's Program. The primary goal of the ABC's Program is to improve student performance. The Program is based upon an accountability, recognition, assistance, and intervention process in order to hold each participating school, its superintendent, and the instructional personnel accountable for improved student performance in that school.

(b) In order to support the participating schools in the implementation of this Program, the State Board, in consultation with the Secretary, shall adopt guidelines, including guidelines to:

- (1) Assist the Secretary and the participating schools in the development and implementation of the ABC's Program.
- (2) Recognize the participating schools that meet or exceed their goals.
- (3) Identify participating schools that are low-performing and assign assistance teams to those schools. The assistance teams should include individuals with expertise in residential schools, individuals with experience in the education of children with disabilities, and others the State Board, in consultation with the Secretary, considers appropriate.
- (4) Enable assistance teams to make appropriate recommendations.

(c) The ABC's Program shall provide increased decision making and parental involvement at the school level with the goal of improving student performance.

(d) Consistent with improving student performance, the Secretary shall provide maximum flexibility to participating schools in the use of funds to enable those schools to accomplish their goals.

"§ 143B-146.3. Annual performance goals.

The ABC's Program shall (i) focus on student performance in the basics of reading, mathematics, and communications skills in elementary and middle schools, (ii) focus on student performance in courses required for graduation and on other measures required by the State Board in the high schools, and (iii) hold participating schools accountable for the educational growth of their students. To those ends, the State Board shall design and implement an accountability system that sets annual performance standards for each participating school in order to measure the growth in performance of the students in each individual school.

"§ 143B-146.4. Performance recognition.

(a) The superintendent and instructional personnel assigned to participating schools that achieve or exceed a level of expected growth to be determined by the State Board are eligible for financial awards in amounts set by the State Board. Participating schools and personnel shall not be required to apply for these awards.

(b) The State Board shall establish a procedure to allocate the funds for these awards. Funds shall become available for expenditure July 1 of each fiscal year. Funds shall remain available until November 30 of the subsequent fiscal year for expenditure for:

- (1) Awards to the personnel; or
- (2) The purposes authorized in a plan that has been:
 - a. Developed and voted on by the superintendent and instructional personnel in the same manner that a school improvement plan is approved under G.S. 143B-146.12;
 - b. Approved by a majority of the personnel who vote on the plan; and
 - c. Submitted to and approved by the Secretary.

The Secretary shall approve this plan unless the plan involves expenditures of funds that are not for a public purpose or that are otherwise unlawful.

"§ 143B-146.5. Identification of low-performing schools.

(a) The State Board shall design and implement a procedure to identify low-performing schools on an annual basis. Low-performing schools are those participating schools in which there is a failure to meet the minimum growth standards, as defined by the State Board, and a majority of students are performing below grade level.

(a1) By July 10 of each year, the Secretary shall do a preliminary analysis of test results to determine which participating schools the State Board may identify as low-performing under this section. The Secretary then shall proceed under G.S. 143B-146.7. In addition, within 30 days of the initial identification of a school as low-performing by the Secretary or the State Board, whichever occurs first, the Secretary shall develop a preliminary plan for addressing the needs of that school. Before the Secretary adopts this plan, the Secretary shall make the plan available to the residential school personnel and the parents and guardians of the students of the school, and shall allow for written comments. Within five days of adopting the plan, the Secretary shall submit the plan to the State Board. The State Board shall review the plan expeditiously and, if appropriate, may offer recommendations to modify the plan. The Secretary shall consider any recommendations made by the State Board.

(b) Each identified low-performing school shall provide written notification to the parents of students attending that school. The written notification shall include a statement that the State Board of Education has found that the school has 'failed to meet the minimum growth standards, as defined by the State Board, and a majority of students in the school are performing below grade level.' This notification also shall include a description of the steps the school is taking to improve student performance.

"§ 143B-146.6. Assistance teams; review by State Board.

(a) The State Board may assign an assistance team to any school identified as low-performing under this Part or to any other school that the State Board determines would benefit from an assistance team. The State Board shall give priority to low-performing schools in which the educational performance of the students is declining. The Department shall, with the approval of the Secretary, provide staff as needed and requested by an assistance team.

(b) When assigned to an identified low-performing school, an assistance team shall:

- (1) Review and investigate all facets of school operations, including instructional and residential, and assist in developing recommendations for improving student performance at that school.
- (2) Evaluate at least semiannually the superintendent and instructional personnel assigned to the school and make findings and recommendations concerning their performance.
- (3) Collaborate with school staff, the Department, and the Secretary in the design, implementation, and monitoring of a plan that, if fully

implemented, can reasonably be expected to alleviate problems and improve student performance at that school.

(4) Make recommendations as the school develops and implements this plan.

(5) Review the school's progress.

(6) Report, as appropriate, to the Secretary, the State Board, and the parents on the school's progress. If an assistance team determines that an accepted school improvement plan developed under G.S. 143B-146.12 is impeding student performance at a school, the team may recommend to the Secretary that he vacate the relevant portions of that plan and direct the school to revise those portions.

(c) If a participating school fails to improve student performance after assistance is provided under this section, the assistance team may recommend that the assistance continue or that the Secretary take further action under G.S. 143B-146.7.

(d) The Secretary, in consultation with the State Board, shall annually review the progress made in identified low-performing schools.

"§ 143B-146.7. Consequences for personnel at low-performing schools.

(a) Within 30 days of the initial identification of a school as low-performing, whether by the Secretary under G.S. 143B-146.5(a1) or by the State Board under G.S. 143B-146.5(a), the Secretary shall take one of the following actions concerning the school's superintendent: (i) decide whether the superintendent should be retained in the same position, (ii) decide whether the superintendent should be retained in the same position and a plan of remediation should be developed, (iii) decide whether the superintendent should be transferred, or (iv) proceed under the State Personnel Act to dismiss or demote the superintendent. The superintendent may be retained in the same position without a plan for remediation only if the superintendent was in that position for no more than two years before the school is identified as low-performing. The superintendent shall not be transferred to another position unless (i) it is in a superintendent position in which the superintendent previously demonstrated at least two years of success, (ii) there is a plan to evaluate and provide remediation to the superintendent for at least one year following the transfer to assure the superintendent does not impede student performance at the school to which the superintendent is being transferred; and (iii) the parents of the students at the school to which the superintendent is being transferred are notified. The superintendent shall not be transferred to another low-performing school. The Secretary may, at any time, proceed under the State Personnel Act for the dismissal of any superintendent who is assigned to a low-performing school to which an assistance team has been assigned. The Secretary shall proceed under the State Personnel Act for the dismissal of any superintendent when the Secretary receives from the assistance team assigned to that school two consecutive evaluations that include written findings and recommendations regarding the superintendent's inadequate performance. The Secretary shall order the dismissal of the superintendent if the Secretary determines from available information, including the findings of the assistance team, that the low performance of the school is due to the superintendent's inadequate performance. The Secretary may

order the dismissal of the superintendent if (i) the Secretary determines that the school has not made satisfactory improvement after the State Board assigned an assistance team to that school; and (ii) the assistance team makes the recommendation to dismiss the superintendent. The Secretary may order the dismissal of a superintendent before the assistance team assigned to the superintendent's school has evaluated that superintendent if the Secretary determines from other available information that the low performance of the school is due to the superintendent's inadequate performance. The burden of proof is on the superintendent to establish that the factors leading to the school's low performance were not due to the superintendent's inadequate performance. The burden of proof is on the Secretary to establish that the school failed to make satisfactory improvement after an assistance team was assigned to the school. Two consecutive evaluations that include written findings and recommendations regarding that person's inadequate performance from the assistance team are substantial evidence of the inadequate performance of the superintendent. Within 15 days of the Secretary's decision concerning the superintendent, but no later than September 30, the Secretary shall submit to the State Board a written notice of the action taken and the basis for that action.

(b) At any time after the State Board identifies a school as low-performing under this Part, the Secretary shall proceed under G.S. 115C-325(p1) for the dismissal of certificated instructional personnel assigned to that school.

(c) At any time after the State Board identifies a school as low-performing under this Part, the Secretary shall proceed under the State Personnel Act for the dismissal of instructional personnel who are not certificated when the Secretary receives two consecutive evaluations that include written findings and recommendations regarding that person's inadequate performance from the assistance team. These findings and recommendations shall be substantial evidence of the inadequate performance of the instructional personnel. The Secretary may proceed under the State Personnel Act for the dismissal of instructional personnel who are not certificated when: (i) the Secretary determines that the school has failed to make satisfactory improvement after the State Board assigned an assistance team to that school; and (ii) that the assistance team makes the recommendation to dismiss that person for a reason that constitutes just cause for dismissal under the State Personnel Act.

(d) The certificated instructional personnel working in a participating school at the time the school is identified by the State Board as low-performing are subject to G.S. 115C-105.38A.

(e) The Secretary may terminate the contract of a school administrator dismissed under this section. Nothing in this section shall prevent the Secretary from refusing to renew the contract of any person employed in a school identified as low-performing under this Part.

"§ 143B-146.8. Evaluation of certificated personnel and superintendents; action plans; State Board notification.

(a) Annual Evaluations; Low-Performing Schools. -- The superintendent shall evaluate at least once each year all certificated personnel assigned to a participating school that has been identified as low-performing but has not

received an assistance team. The evaluation shall occur early enough during the school year to provide adequate time for the development and implementation of an action plan if one is recommended under subsection (b) of this section. If the employee is a teacher as defined under G.S. 115C-325(a)(6), either the principal or an assessment team assigned under G.S. 143B-146.9 shall conduct the evaluation. If the employee is a school administrator as defined under G.S. 115C-287.1(a)(3), the superintendent shall conduct the evaluation.

Notwithstanding this subsection or any other law, the principal shall observe at least three times annually, a teacher shall observe at least once annually, and the principal shall evaluate at least once annually, all teachers who have not attained career status. All other employees defined as teachers under G.S. 115C-325(a)(6) who are assigned to participating schools that are not designated as low-performing shall be evaluated annually unless the Secretary adopts rules that allow specified categories of teachers with career status to be evaluated more or less frequently. The Secretary also may adopt rules requiring the annual evaluation of noncertificated personnel. This section shall not be construed to limit the duties and authority of an assistance team assigned to a low-performing school.

The Secretary shall use the State Board's performance standards and criteria unless the Secretary develops an alternative evaluation that is properly validated and that includes standards and criteria similar to those adopted by the State Board. All other provisions of this section shall apply if an evaluation is used other than one adopted by the State Board.

(b) Action Plans. -- If a certificated employee receives an unsatisfactory or below standard rating on any function of the evaluation that is related to the employee's instructional duties, the individual or team that conducted the evaluation shall recommend to the superintendent that: (i) the employee receive an action plan designed to improve the employee's performance; or (ii) the superintendent recommend to the Secretary that the employee be dismissed or demoted. The superintendent shall determine whether to develop an action plan or to recommend a dismissal proceeding. The person who evaluated the employee or the employee's supervisor shall develop the action plan unless an assistance team or assessment team conducted the evaluation. If an assistance team or assessment team conducted the evaluation, that team shall develop the action plan in collaboration with the employee's supervisor. Action plans shall be designed to be completed within 90 instructional days or before the beginning of the next school year. The State Board, in consultation with the Secretary, shall develop guidelines that include strategies to assist in evaluating certificated personnel and developing effective action plans within the time allotted under this section. The Secretary may adopt policies for the development and implementation of action plans or professional development plans for personnel who do not require action plans under this section.

(c) Reevaluation. -- Upon completion of an action plan under subsection (b) of this section, the superintendent or the assessment team shall evaluate the employee a second time. If on the second evaluation the employee receives one unsatisfactory or more than one below standard rating on any function that is related to the employee's instructional duties, the

superintendent shall recommend that the employee be dismissed or demoted under G.S. 115C-325. The results of the second evaluation shall constitute substantial evidence of the employee's inadequate performance.

(d) State Board Notification. -- If the Secretary dismisses an employee for any reason except a reduction in force under G.S. 115C-325(e)(1)l., the Secretary shall notify the State Board of the action, and the State Board annually shall provide to all local boards of education the names of those individuals. If a local board hires one of these individuals, that local board shall proceed under G.S. 115C-333(d).

(e) Civil Immunity. -- There shall be no liability for negligence on the part of the Secretary or the State Board, or their employees, arising from any action taken or omission by any of them in carrying out this section. The immunity established by this subsection shall not extend to gross negligence, wanton conduct, or intentional wrongdoing that would otherwise be actionable. The immunity established by this subsection is waived to the extent of indemnification by insurance, indemnification under Articles 31A and 31B of Chapter 143 of the General Statutes, and to the extent sovereign immunity is waived under the Tort Claims Act, as set forth in Article 31 of Chapter 143 of the General Statutes.

(f) Evaluation of Superintendents. -- Each year the Secretary or the Secretary's designee shall evaluate the superintendents.

"§ 143B-146.9. Assessment teams.

The State Board shall develop guidelines for the Secretary to use to create assessment teams. The Secretary shall assign an assessment team to every low-performing school that has not received an assistance team. The Secretary shall ensure that assessment team members are trained in the proper administration of the employee evaluation used in the participating schools. If service on an assessment team is an additional duty for an employee of a local school administrative unit or an employee of a residential school, the Secretary may pay the employee for that additional work.

Assessment teams shall:

- (1) Conduct evaluations of certificated personnel in low-performing schools;
- (2) Provide technical assistance and training to principals and superintendents who conduct evaluations of certificated personnel;
- (3) Develop action plans for certificated personnel; and
- (4) Assist principals and superintendents in the development and implementation of action plans.

"§ 143B-146.10. Development of performance standards and criteria for certificated personnel.

The State Board, in consultation with the Secretary, shall revise and develop uniform performance standards and criteria to be used in evaluating certificated personnel, including school administrators. These standards and criteria shall include improving student achievement, employee skills, and employee knowledge. The standards and criteria for school administrators also shall include building-level gains in student learning and effectiveness in providing for school safety and enforcing student discipline. The Secretary shall develop guidelines for evaluating superintendents. The

guidelines shall include criteria for evaluating a superintendent's effectiveness in providing safe schools and enforcing student discipline.

"§ 143B-146.11. School calendar.

Each school shall adopt a school calendar that includes a minimum of 180 days and 1,000 hours of instruction covering at least nine calendar months. In the development of its school calendar, each school shall consult with parents, the residential school personnel, and the local school administrative unit in which that school is located.

"§ 143B-146.12. Development and approval of school improvement plans.

(a) In order to improve student performance, each participating school shall develop a school improvement plan that takes into consideration the annual performance goal for that school that is set by the State Board under G.S. 143B-146.3. The superintendent, instructional personnel, and residential life personnel assigned to that school, and a minimum of five parents of children enrolled in the school shall constitute a school improvement team to develop a school improvement plan to improve student performance.

(b) Parents shall be elected by parents of children enrolled in the school in an election conducted by the parent and teacher organization of the school or, if none exists, by the largest organization of parents formed for this purpose. To the extent possible, parents serving on school improvement teams shall reflect the composition of the students enrolled in that school. No more than two parents may be employees of the school. Parental involvement is a critical component of school success and positive student achievement; therefore, it is the intent of the General Assembly that parents, along with teachers, have a substantial role in developing school improvement plans. To this end, school improvement team meetings shall be held at a convenient time to assure substantial parent participation. Parents who are elected to serve on school improvement teams and who are not employees of the school shall receive travel and subsistence expenses in accordance with G.S. 138-5 and, if appropriate, may receive a stipend.

(c) The strategies for improving student performance shall include the following:

- (1) A plan for the use of funds that may be made available to the school by the Secretary to meet the goals for that school under the ABC's Program and to implement the school improvement plan.
- (2) A comprehensive plan to encourage parent involvement.
- (3) A safe school plan designed to provide that the school is safe, secure, and orderly, that there is a climate of respect in the school, and that appropriate personal conduct is a priority for all students and all residential school personnel. This plan shall include components similar to those listed in G.S. 115C-105.47(b).

(d) Support among affected staff members is essential to successful implementation of a school improvement plan to address improved student performance at that school. The superintendent of the school shall present the proposed school improvement plan to all of the instructional personnel assigned to the school for their review and vote. The vote shall be by secret ballot. The superintendent shall submit the school improvement plan to the

Secretary only if the proposed school improvement plan has the approval of a majority of the instructional personnel who voted on the plan.

(e) The Secretary shall accept or reject the school improvement plan. The Secretary shall not make any substantive changes in any school improvement plan that the Secretary accepts. If the Secretary rejects a school improvement plan, the Secretary shall state with specificity the reasons for rejecting the plan; the school improvement team may then prepare another plan, present it to the instructional personnel assigned to the school for a vote, and submit it to the Secretary to accept or reject. Within 60 days after the initial submission of the school improvement plan to the Secretary, the Secretary shall accept the plan or shall designate a person to work with the school improvement team to resolve the disagreements. If there is no resolution within 30 days, then the Secretary may develop a school improvement plan for the school; however, the General Assembly urges the Secretary to utilize the school's proposed school improvement plan to the maximum extent possible when developing this plan.

(f) A school improvement plan shall remain in effect for no more than three years; however, the school improvement team may amend the plan as often as is necessary or appropriate. If, at any time, any part of a school improvement plan becomes unlawful or the Secretary finds that a school improvement plan is impeding student performance at a school, the Secretary may vacate the relevant portion of the plan and may direct the school to revise that portion. The procedures set out in this section shall apply to amendments and revisions to school improvement plans.

(g) Any funds the Secretary makes available to a school to meet the goals for that school under the ABC's Program and to implement the school improvement plan at that school shall be used in accordance with those goals and the school improvement plan.

(h) The Secretary, in consultation with the State Board, shall develop a list of recommended strategies that it determines to be effective which building-level committees may use to establish parent involvement programs designed to meet the specific needs of their schools.

(i) Once developed, the Secretary shall ensure the plan is available and accessible to parents and the school community.

"§ 143B-146.13. School technology plan.

(a) No later than December 15, 1998, the Secretary shall develop a school technology plan for the residential schools that meets the requirements of the State school technology plan. In developing a school technology plan, the Secretary is encouraged to coordinate its planning with other agencies of State and local government, including local school administrative units.

The Information Resources Management Commission shall assist the Secretary in developing the parts of the plan related to its technological aspects, to the extent that resources are available to do so. The Department of Public Instruction shall assist the Secretary in developing the instructional and technological aspects of the plan.

The Secretary shall submit the plan that is developed to the Information Resources Management Commission for its evaluation of the parts of the plan related to its technological aspects and to the Department of Public

Instruction for its evaluation of the instructional aspects of the plan. The State Board of Education, after consideration of the evaluations of the Information Resources Management Commission and the Department of Public Instruction, shall approve all plans that comply with the requirements of the State school technology plan.

(b) After a plan is approved by the State Board of Education, all funds spent for technology in the residential schools shall be used to implement the school technology plan.

"§ 143B-146.14. *Dispute resolution; appeals to Secretary.*

The Secretary shall establish a procedure for the resolution of disputes between the residential schools and the parents or guardians of students who attend the schools.

An appeal shall lie from the decision of all residential school personnel to the Secretary or the Secretary's designee. In all of these appeals it is the duty of the Secretary to see that a proper notice is given to all parties concerned and that a record of the hearing is properly entered in the records.

"§ 143B-146.15. *Duty to report certain acts to law enforcement.*

When the superintendent has personal knowledge or actual notice from residential school personnel or other reliable source that an act has occurred on school property involving assault resulting in serious personal injury, sexual assault, sexual offense, rape, kidnapping, indecent liberties with a minor, assault involving the use of a weapon, possession of a firearm in violation of the law, possession of a weapon in violation of the law, or possession of a controlled substance in violation of the law, the superintendent shall immediately report the act to the appropriate local law enforcement agency. Failure to report under this section is a Class 3 misdemeanor. For purposes of this section, 'school property' shall include any building, bus, campus, grounds, recreational area, or athletic field, in the charge of the superintendent or while the student is under the supervision of school personnel. It is the intent of the General Assembly that the superintendent notify the Secretary or the Secretary's designee of any report made to law enforcement under this section.

"§ 143B-146.16. *Residential school personnel criminal history checks.*

(a) As used in this section:

- (1) 'Criminal history' means a county, state, or federal criminal history of conviction of a crime, whether a misdemeanor or a felony, that indicates the employee (i) poses a threat to the physical safety of students or personnel, or (ii) has demonstrated that he or she does not have the integrity or honesty to fulfill his or her duties as school personnel. Such crimes include the following North Carolina crimes contained in any of the following Articles of Chapter 14 of the General Statutes: Article 5A, Endangering Executive and Legislative Officers; Article 6, Homicide; Article 7A, Rape and Kindred Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 14, Burglary and Other Housebreakings; Article 15, Arson and Other Burnings; Article 16, Larceny; Article 17, Robbery;

Article 18, Embezzlement; Article 19, False Pretense and Cheats; Article 19A, Obtaining Property or Services by False or Fraudulent Use of Credit Device or Other Means; Article 20, Frauds; Article 21, Forgery; Article 26, Offenses Against Public Morality and Decency; Article 26A, Adult Establishments; Article 27, Prostitution; Article 28, Perjury; Article 29, Bribery; Article 31, Misconduct in Public Office; Article 35, Offenses Against the Public Peace; Article 36A, Riots and Civil Disorders; Article 39, Protection of Minors; and Article 60, Computer-Related Crime. Such crimes also include possession or sale of drugs in violation of the North Carolina Controlled Substances Act, Article 5 of Chapter 90 of the General Statutes, and alcohol-related offenses such as sale to underage persons in violation of G.S. 18B-302 or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5. In addition to the North Carolina crimes listed in this subdivision, such crimes also include similar crimes under federal law or under the laws of other states.

(2) 'Residential school personnel' means any:

- a. Employee of a residential school whether full time or part time, or
- b. Independent contractor or employee of an independent contractor of a residential school, if the independent contractor carries out duties customarily performed by residential school personnel,

whether paid with federal, State, local, or other funds, who has significant access to students in a residential school. Residential school personnel includes substitute teachers, driver training teachers, bus drivers, clerical staff, houseparents, and custodians.

(b) The Secretary shall require an applicant for a residential school personnel position to be checked for a criminal history before the applicant is offered an unconditional job. A residential school may employ an applicant conditionally while the Secretary is checking the person's criminal history and making a decision based on the results of the check.

The Secretary shall not require an applicant to pay for the criminal history check authorized under this subsection.

(c) The Department of Justice shall provide to the Secretary the criminal history from the State and National Repositories of Criminal Histories of any applicant for a residential school personnel position in a residential school. The Secretary shall require the person to be checked by the Department of Justice to (i) be fingerprinted and to provide any additional information required by the Department of Justice to a person designated by the Secretary, or to the local sheriff or the municipal police, whichever is more convenient for the person, and (ii) sign a form consenting to the check of the criminal record and to the use of fingerprints and other identifying information required by the repositories. The Secretary shall consider refusal to consent when making employment decisions and decisions with regard to independent contractors.

The Secretary shall not require an applicant to pay for being fingerprinted.

(d) The Secretary shall review the criminal history it receives on a person. The Secretary shall determine whether the results of the review indicate that the employee (i) poses a threat to the physical safety of students or personnel, or (ii) has demonstrated that he or she does not have the integrity or honesty to fulfill his or her duties as residential school personnel and shall use the information when making employment decisions and decisions with regard to independent contractors. The Secretary shall make written findings with regard to how it used the information when making employment decisions and decisions with regard to independent contractors.

(e) The Secretary shall provide to the State Board of Education the criminal history received on a person who is certificated, certified, or licensed by the State Board. The State Board shall review the criminal history and determine whether the person's certificate or license should be revoked in accordance with State laws and rules regarding revocation.

(f) All the information received by the Secretary through the checking of the criminal history or by the State Board in accordance with subsection (d) of this section is privileged information and is not a public record but is for the exclusive use of the Secretary or the State Board of Education. The Secretary or the State Board of Education may destroy the information after it is used for the purposes authorized by this section after one calendar year.

(g) There shall be no liability for negligence on the part of the Secretary, the Department of Health and Human Services or its employees, a residential school or its employees, or the State Board of Education or its employees, arising from any act taken or omission by any of them in carrying out the provisions of this section. The immunity established by this subsection shall not extend to gross negligence, wanton conduct, or intentional wrongdoing that would otherwise be actionable. The immunity established by this subsection shall be deemed to have been waived to the extent of indemnification by insurance, indemnification under Articles 31A and 31B of Chapter 143 of the General Statutes, and to the extent sovereign immunity is waived under the Tort Claims Act, as set forth in Article 31 of Chapter 143 of the General Statutes."

Section 6. G.S. 115C-325 is amended by adding the following new subsection to read:

"(p1) Procedure for Dismissal of School Administrators and Teachers Employed in Low-Performing Residential Schools. --

(1) Notwithstanding any other provision of this section or any other law, this subdivision shall govern the dismissal by the Secretary of Health and Human Services of teachers, principals, assistant principals, directors, supervisors, and other certificated personnel assigned to a residential school that the State Board has identified as low-performing and to which the State Board has assigned an assistance team under Part 3A of Article 3 of Chapter 143B of the General Statutes. The Secretary shall dismiss a teacher, principal, assistant principal, director, supervisor, or other certificated personnel when the Secretary receives two consecutive evaluations that include written findings and recommendations regarding that person's inadequate performance from the assistance team. These

findings and recommendations shall be substantial evidence of the inadequate performance of the teacher or school administrator.

The Secretary may dismiss a teacher, principal, assistant principal, director, supervisor, or other certificated personnel when:

- a. The Secretary determines that the school has failed to make satisfactory improvement after the State Board assigned an assistance team to that school under Part 3A of Article 3 of Chapter 143B of the General Statutes; and
- b. That assistance team makes the recommendation to dismiss the teacher, principal, assistant principal, director, supervisor, or other certificated personnel for one or more grounds established in G.S. 115C-325(e)(1) for dismissal or demotion of a career employee.

Within 30 days of any dismissal under this subdivision, a teacher, principal, assistant principal, director, supervisor, or other certificated personnel may request a hearing before a panel of three members designated by the Secretary. The Secretary shall adopt procedures to ensure that due process rights are afforded to persons recommended for dismissal under this subdivision. Decisions of the panel may be appealed on the record to the Secretary, with further right of judicial review under Chapter 150B of the General Statutes.

- (2) Notwithstanding any other provision of this section or any other law, this subdivision shall govern the dismissal by the Secretary of Health and Human Services of certificated staff members who have engaged in a remediation plan under G.S. 115C-105.38A(c) but who, after one retest, fail to meet the general knowledge standard set by the State Board. The failure to meet the general knowledge standard after one retest shall be substantial evidence of the inadequate performance of the certified staff member.

Within 30 days of any dismissal under this subdivision, a certificated staff member may request a hearing before a panel of three members designated by the Secretary of Health and Human Services. The Secretary shall adopt procedures to ensure that due process rights are afforded to certificated staff members recommended for dismissal under this subdivision. Decisions of the panel may be appealed on the record to the Secretary, with further right of judicial review under Chapter 150B of the General Statutes.

- (3) The Secretary of Health and Human Services or the superintendent of a residential school may terminate the contract of a school administrator dismissed under this subsection. Nothing in this subsection shall prevent the Secretary from refusing to renew the contract of any person employed in a school identified as low-performing under Part 3A of Article 3 of Chapter 143B of the General Statutes.
- (4) Neither party to a school administrator contract is entitled to damages under this subsection.

- (5) The Secretary of Health and Human Services shall have the right to subpoena witnesses and documents on behalf of any party to the proceedings under this subsection."

Section 7. G.S. 115C-102.5(b) reads as rewritten:

"(b) The Commission shall consist of the following ~~48~~ 19 members:

- (1) The State Superintendent of Public Instruction or a designee;
- (2) One representative of The University of North Carolina, appointed by the President of The University of North Carolina;
- (3) One representative of the North Carolina Community College System, appointed by the President of the North Carolina Community College System;
- (4) A person with management responsibility concerning information technology related State Government functions, designated by the Secretary of Commerce;
- (5) Four members appointed by the Governor;
- (6) Six members appointed by the President Pro Tempore of the Senate two of whom shall be members of the Senate. One of these six members shall be appointed by the President of the Senate to serve as cochair; ~~and~~
- (7) Six members appointed by the Speaker of the House of Representatives two of whom shall be members of the House of Representatives. One of these six members shall be appointed by the Speaker of the House of Representatives to serve as ~~cochair~~, cochair; and

- (8) The Secretary of Health and Human Services or a designee.

In appointing members pursuant to subdivisions (5), (6), and (7) of this subsection, the appointing persons shall select individuals with technical or applied knowledge or experience in learning and instructional management technologies or individuals with expertise in curriculum or instruction who have successfully used learning and instructional management technologies.

No producers, vendors, or consultants to producers or vendors of learning or instructional management technologies shall serve on the Commission.

Members shall serve for two-year terms. Vacancies in terms of members shall be filled by the appointing officer. Persons appointed to fill vacancies shall qualify in the same manner as persons appointed for full terms."

Section 8. G.S. 115C-296(d) reads as rewritten:

"(d) The State Board shall adopt rules to establish the reasons and procedures for the suspension and revocation of certificates. The State Board shall revoke the certificate of a teacher or school administrator if the State Board receives notification from a local board or the Secretary of Health and Human Services that a teacher or school administrator has received an unsatisfactory or below standard rating under G.S. 115C-333(d). In addition, the State Board may revoke or refuse to renew a teacher's certificate when:

- (1) The Board identifies the school in which the teacher is employed as low-performing under ~~G.S. 115C-105.37~~; G.S. 115C-105.37 or G.S. 143B-146.5; and
- (2) The assistance team assigned to that school ~~under G.S. 115C-105.38~~ makes the recommendation to revoke or refuse to

renew the teacher's certificate for one or more reasons established by the State Board in its rules for certificate suspension or revocation.

The State Board may issue subpoenas for the purpose of obtaining documents or the testimony of witnesses in connection with proceedings to suspend or revoke certificates."

Section 9. G.S. 115C-105.31 reads as rewritten:

"§ 115C-105.31. *Creation of the Task Force on School-Based Management.*

(a) There is created the Task Force on School-Based Management under the State Board of Education.

The Task Force shall be composed of ~~20~~ 21 members appointed as follows:

- (1) The Superintendent of Public Instruction;
- (2) One member of the State Board of Education, one parent of a public school child, and two at-large members appointed by the State Board of Education;
- (3) Two members of the Senate appointed by the President Pro Tempore of the Senate;
- (4) Two members of the House of Representatives appointed by the Speaker of the House of Representatives;
- (5) One member of a local board of education appointed by the President Pro Tempore of the Senate after receiving recommendations from The North Carolina State School Boards Association, Inc.;
- (6) One member of a local board of education appointed by the Speaker of the House of Representatives after receiving recommendations from The North Carolina State School Boards Association, Inc.;
- (7) One local school superintendent appointed by the President Pro Tempore of the Senate after receiving recommendations from the North Carolina Association of School Administrators;
- (8) One local school superintendent appointed by the Speaker of the House of Representatives after receiving recommendations from the North Carolina Association of School Administrators;
- (9) One school principal appointed by the President Pro Tempore of the Senate after receiving recommendations from the Tar Heel Association of Principals/Assistant Principals and the Division of Administrators of the North Carolina Association of Educators;
- (10) One school principal appointed by the Speaker of the House of Representatives after receiving recommendations from the Tar Heel Association of Principals/Assistant Principals and the Division of Administrators of the North Carolina Association of Educators;
- (11) One school teacher appointed by the President Pro Tempore of the Senate after receiving recommendations from the North Carolina Association of Educators, Inc., the North Carolina Federation of Teachers, and the Professional Educators of North Carolina, Inc.;

- (12) One school teacher appointed by the Speaker of the House of Representatives after receiving recommendations from the North Carolina Association of Educators, Inc., the North Carolina Federation of Teachers, and the Professional Educators of North Carolina, Inc.;
- (13) One representative of business and industry appointed by the Governor;
- (14) One representative of institutions of higher education appointed by the Board of Governors of The University of North Carolina;
and
- (15) One county commissioner appointed by the State Board of Education after receiving recommendations from the North Carolina Association of County ~~Commissioners.~~ Commissioners;
and
- (16) The Secretary of Health and Human Services or the Secretary's designee.

Members of the Task Force shall serve for two-year terms.

All members of the Task Force shall be voting members. Vacancies in the appointed membership shall be filled by the officer who made the initial appointment. The Task Force on School-Based Management shall select a member of the Task Force to serve as chair of the Task Force.

Members of the Task Force shall receive travel and subsistence expenses in accordance with the provisions of G.S. 120-3.1, G.S. 138-5, and G.S. 138-6.

(b) The Task Force shall:

- (1) Advise the State Board of Education and Secretary of Health and Human Services on the development of guidelines for local boards of education and schools to implement school-based management as part of the School-Based Management and Accountability Program;
- (2) Advise the State Board of Education and the Secretary of Health and Human Services on how to assist the public schools and residential schools so as to facilitate the implementation of school-based management;
- (3) Advise the State Board of Education and Secretary of Health and Human Services about publications to be produced by the Department of Public Instruction on the development and implementation of school improvement plans;
- (4) Report annually to the State Board of Education on the implementation of school-based management in the public schools on the first Friday in December. This report may contain a summary of recommendations for changes to any law, rule, and policy that would improve school-based management.

(c) The Department of Public Instruction shall, with the approval of the State Board of Education, provide staff to the Task Force at the request of the Task Force.

(d) The State Board of Education shall appoint a Director of the Task Force on School-Based Management."

Section 10. (a) The Secretary of Health and Human Services shall adopt policies and offer training opportunities to ensure that personnel who provide direct services to children in the three State schools for the deaf become proficient in sign language within two years of their initial date of employment or within two years of the effective date of this act, whichever occurs later. This subsection shall not apply to preschool personnel in any oral, auditory, or cued speech preschool.

(b) The Department of Public Instruction, the Board of Governors of The University of North Carolina, and the State Board of Community Colleges shall offer and communicate the availability of professional development opportunities, including those to improve sign language skills, to the personnel assigned to the State's residential schools, particularly the Governor Morehead School and the three schools for the deaf.

(c) The Board of Governors of The University of North Carolina and the State Board of Community Colleges shall study methods to assure that faculty members teaching American Sign Language are highly qualified and competent. The Board of Governors and the State Board of Community Colleges shall report their findings and recommendations prior to March 1, 1999, to the Appropriations Subcommittees on Education and on Health and Human Services of the House of Representatives and Senate.

Section 11. The Board of Governors of The University of North Carolina shall assess the accessibility of the programs of the constituent institutions for deaf and blind students. The Board of Governors shall report to the General Assembly by December 1, 1998, on this assessment.

Section 12. The Secretary of Health and Human Services shall contract for the design of a longitudinal study of deaf and hard-of-hearing children to assess communication methods used and student performance.

Section 13. The Commission for Health Services shall adopt temporary and permanent rules to include newborn hearing screening in the Newborn Screening Program established under G.S. 130A-125.

Section 14. The State Board of Education, in consultation with the Secretary of Health and Human Services, shall evaluate the certification requirements for teachers at the State schools for the deaf and the Governor Morehead School in light of the specific educational needs of those schools. In particular, the State Board shall determine whether these teachers should hold (i) certificates to authorize them to teach students with specific disabilities, (ii) certificates authorizing them to teach a specific grade level or subject matter, or (iii) dual certificates, particularly at the high school level. The State Board shall revise any policies, rules, or regulations if considered appropriate and shall report to the Legislative Commission on Public Schools by December 15, 1998, on the results of its evaluation under this section and any changes it proposes.

Section 15. The State Auditor shall conduct a fiscal audit of the Division of Services for the Deaf and Hard of Hearing, Department of Health and Human Services, and the use of current operations funds appropriated to that Division beginning with the 1996-97 fiscal year and the use of capital funds appropriated to that Division beginning with the 1995-96 fiscal year. The Auditor shall report to the General Assembly by March 1, 1999, on the results of this audit.

Section 16. The Governor Morehead School and the three schools for the deaf shall each prioritize its capital needs in a three-year plan. These schools shall give first priority to bringing their facilities up to code and to supporting instructional programs so as to improve student academic performance. The schools shall submit their three-year plans to the Secretary. The Secretary shall prioritize the needs of these four schools and shall submit to the General Assembly a three-year plan to address those needs.

Section 17. The Secretary of Health and Human Services shall adopt policies to ensure that students of the residential schools are given priority to residing in the independent living facilities on each school's campus.

Section 18. If funds are appropriated to the Department of Health and Human Services in the Current Operations and Capital Improvements Appropriations Act of 1998 to implement this act, then of these funds the Secretary may spend up to nine hundred thousand dollars (\$900,000) for the 1998-99 fiscal year to provide funds for assistance teams to be assigned to the Governor Morehead School and to the three schools for the deaf.

Section 19. This act becomes effective July 1, 1998, but becomes effective only if funds are appropriated for the 1998-99 fiscal year to implement this act. Part 3A of Article 3 of Chapter 143B of the General Statutes, as established in Section 5 of this act, applies to kindergarten through eighth grade in the three schools for the deaf and in the Governor Morehead School beginning with the 1999-2000 school year. The Secretary of Health and Human Services, in consultation with the General Assembly and the State Board of Education, shall recommend beginning dates of applicability for the remaining grades in those four schools and for the other residential schools, particularly those operated by the Division of Youth Services. School improvement plans required under Section 5 of this act shall be developed during the 1998-99 school year and shall be implemented by the beginning of the 1999-2000 school year.

In the General Assembly read three times and ratified this the 2nd day of September, 1998.

Became law upon approval of the Governor at 9:17 a.m. on the 9th day of September, 1998.

S.B. 1354

SESSION LAW 1998-132

AN ACT TO AUTHORIZE THE ISSUANCE OF GENERAL OBLIGATION BONDS OF THE STATE, SUBJECT TO A VOTE OF THE QUALIFIED VOTERS OF THE STATE, TO ADDRESS STATEWIDE CRITICAL INFRASTRUCTURE NEEDS BY PROVIDING FUNDS (1) FOR GRANTS AND LOANS TO LOCAL GOVERNMENT UNITS FOR WATER SUPPLY SYSTEMS, WASTEWATER COLLECTION SYSTEMS, WASTEWATER TREATMENT WORKS, AND WATER CONSERVATION AND WATER REUSE PROJECTS AND (2) FOR GRANTS, LOANS, OR OTHER FINANCING TO PUBLIC OR PRIVATE ENTITIES FOR CONSTRUCTION OF NATURAL GAS FACILITIES.

The General Assembly of North Carolina enacts:

Section 1. Short title. This act shall be known as the "Clean Water and Natural Gas Critical Needs Bond Act of 1998."

Section 2. Purpose. It is the intent of the General Assembly by this act to provide for the issuance of general obligation bonds of the State and to provide that the proceeds realized from the sale of the bonds shall be allocated as follows:

(a) Clean Water Bonds.

- (1) \$500,000,000 to provide State matching funds required to receive federal wastewater or water supply assistance funds, to provide additional funding for the Clean Water Revolving Loan and Grant Fund established in Chapter 159G of the General Statutes, and to provide funding by grants to local government units for wastewater treatment and water supply and distribution needs;
- (2) \$300,000,000 to provide loans to local government units to finance all or a portion of the cost of construction, improvements, enlargements, extensions, and reconstruction of water supply and distribution systems, wastewater collection systems, wastewater treatment works, water conservation projects, and water reuse projects.

(b) Natural Gas Bonds.

\$200,000,000 to provide grants, loans, or other financing to natural gas local distribution companies, persons seeking natural gas distribution franchises, State or local government agencies, or other entities for construction of natural gas facilities.

Section 3. Definitions. As used in this act, unless the context otherwise requires:

- (1) "Bond rating" means the numerical rating of a unit of local government developed by the NCMC. The rating formula is based on 100 being a theoretically "perfect" unit of local government and is an assessment of the creditworthiness of the unit. Units of local government with a rating below 75 or with no ratings have limited, if any, access to the private markets for financing water and sewer or other debt.
- (2) "Bonds" means bonds issued under this act.
- (3) "Capacity grant" means a grant awarded by the Rural Economic Development Center to a local government unit to pay all or a portion of the cost associated with the planning and writing of a grant or loan application, a capital improvement plan, or other efforts that support growth and development of rural areas.
- (4) "Capital improvement plan" means a report that identifies water and sewer infrastructure and capital needs that address planned and strategic growth. It shall include an assessment of current water and wastewater systems and a projection of those infrastructure needs over a 20-year horizon. The report shall take into consideration government mandates, usefulness of the improvements to the community and the effect on both short and long-term operation and maintenance of the scheduled improvements and identify alternatives for meeting the identified

need including regionalization, consolidation and system mergers, water reuse and conservation.

- (5) "Clean Water Revolving Loan and Grant Act" means Chapter 796 of the 1987 Session Laws, as amended from time to time, codified as Chapter 159G of the General Statutes.
- (6) "Clean Water Revolving Loan and Grant Fund" means the Clean Water Revolving Loan and Grant Fund as defined in the Clean Water Revolving Loan and Grant Act.
- (7) "Cost" means, without intending thereby to limit or restrict any proper definition of this term in financing the cost of facilities or purposes authorized by this act:
 - a. The cost of constructing, reconstructing, enlarging, acquiring, and improving facilities, and acquiring equipment and land therefor,
 - b. The cost of engineering, architectural, and other consulting services as may be required,
 - c. Administrative expenses and charges,
 - d. Finance charges and interest prior to and during construction and, if deemed advisable by the State Treasurer, for a period not exceeding two years after the estimated date of completion of construction,
 - e. The cost of bond insurance, investment contracts, credit enhancement and liquidity facilities, interest-rate swap agreements or other derivative products, financial and legal consultants, and related costs of bond and note issuance, to the extent and as determined by the State Treasurer,
 - f. The cost of reimbursing the State for any payments made for any cost described above, and
 - g. Any other costs and expenses necessary or incidental to the purposes of this act.

Allocations in this act of proceeds of bonds to the costs of a project or undertaking in each case may include allocations to pay the costs set forth in items c., d., e., f., and g. in connection with the issuance of bonds for the project or undertaking.

- (8) "Credit facility" means an agreement entered into by the State Treasurer on behalf of the State with a bank, savings and loan association, or other banking institution, an insurance company, reinsurance company, surety company, or other insurance institution, a corporation, investment banking firm, or other investment institution, or any financial institution or other similar provider of a credit facility, which provider may be located within or without the United States of America, such agreement providing for prompt payment of all or any part of the principal or purchase price (whether at maturity, presentment or tender for purchase, redemption, or acceleration), redemption premium, if any, and interest on any bonds or notes payable on demand or tender by the owner, in consideration of the State agreeing to repay the provider of the credit facility in accordance with the terms and provisions of such agreement.

- (9) "Economically depressed area" means any of the following:
- a. An economically distressed county as defined in G.S. 143B-437.01.
 - b. That part of a rural county whose poverty rate is at least one hundred fifty percent (150%) of the State poverty rate. For the purpose of this section, the poverty rate is the percentage of the population with income below the latest annual federal poverty guidelines issued by the Bureau of the Census.
 - c. That part of a rural county that experiences an actual or imminent loss of manufacturing jobs in a number that is equal to or exceeds five percent (5%) of the total number of manufacturing jobs in the part.
- (10) "Local government units" means local government units as defined in the Clean Water Revolving Loan and Grant Act.
- (11) "NCMC" means the North Carolina Municipal Council, Inc., a nonprofit North Carolina corporation which provides bond ratings, or any successor thereto. In the event such corporation dissolves or no longer performs the functions contemplated herein, such term shall mean that comparable corporation designated by the State Treasurer.
- (12) "Notes" means notes issued under this act.
- (13) "Par formula" means any provision or formula adopted by the State to provide for the adjustment, from time to time, of the interest rate or rates borne by any bonds or notes, including:
- a. A provision providing for such adjustment so that the purchase price of such bonds or notes in the open market would be as close to par as possible,
 - b. A provision providing for such adjustment based upon a percentage or percentages of a prime rate or base rate, which percentage or percentages may vary or be applied for different periods of time, or
 - c. Such other provision as the State Treasurer may determine to be consistent with this act and will not materially and adversely affect the financial position of the State and the marketing of bonds or notes at a reasonable interest cost to the State.
- (14) "Rural county" means a county with a density of fewer than 200 people per square mile based on the 1990 United States census.
- (15) "Rural Economic Development Center" means the Rural Economic Development Center, Inc., a nonprofit North Carolina corporation, or any successor thereto. In the event such corporation dissolves or no longer performs the functions contemplated herein, such term shall mean that comparable corporation designated by the Governor.
- (16) "Rural school" means a school that is located in a rural county or a school that is located outside the corporate limits of any municipality located in a county that is not a rural county.

- (17) "School water or wastewater project" means a project to provide clean water or wastewater treatment for a school by upgrading, replacing, or constructing school water or wastewater facilities.
- (18) "State" means the State of North Carolina.
- (19) "Supplemental grant" means a grant awarded by the Rural Economic Development Center to a local government unit to assist in financing wastewater collection systems, wastewater treatment works, water conservation projects, water reuse projects, or water supply systems.
- (20) "Unsewered communities" means those communities lacking centralized, publicly owned wastewater collection systems and wastewater treatment works.
- (21) "Wastewater collection systems" means wastewater collection systems as defined in the Clean Water Revolving Loan and Grant Act.
- (22) "Wastewater treatment works" means wastewater treatment works as defined in the Clean Water Revolving Loan and Grant Act.
- (23) "Water conservation projects" include, but are not limited to, any construction, repair, renovation, expansion, replacement of components, or other capital improvement, including related equipment and land acquisition, designed to:
 - a. Eliminate the wasteful or unnecessary use or loss of water in the operations of a wastewater collection system, wastewater treatment works, or water supply system; or
 - b. Enhance the operation of a wastewater collection system, wastewater treatment works, or water supply system to provide a more efficient use of water.
- (24) "Water Pollution Control Revolving Fund" means the fund described by G.S. 159G-4(a) and G.S. 159G-5(c).
- (25) "Water reuse" means the actual use or application of treated wastewater in or on areas which require water but do not require potable water quality.
- (26) "Water supply systems" means water supply systems as defined in the Clean Water Revolving Loan and Grant Act.

Section 4. Authorization of bonds and notes.

(a) Clean Water Bonds. Subject to a favorable vote of a majority of the qualified voters of the State who vote on the question of issuing Clean Water Bonds in the election called and held as provided in this act, the State Treasurer is hereby authorized, by and with the consent of the Council of State, to issue and sell, at one time or from time to time, general obligation bonds of the State to be designated "State of North Carolina Clean Water Bonds", with any additional designations as may be determined to indicate the issuance of bonds from time to time, or notes of the State as provided in this act, in an aggregate principal amount not exceeding eight hundred million dollars (\$800,000,000) for the purpose of providing funds, with any other available funds, for the purposes authorized in this act.

(b) Natural Gas Bonds. Subject to a favorable vote of a majority of the qualified voters of the State who vote on the question of issuing Natural Gas Bonds in the election called and held as provided in this act, the State

Treasurer is hereby authorized, by and with the consent of the Council of State, to issue and sell, at one time or from time to time, general obligation bonds of the State to be designated "State of North Carolina Natural Gas Bonds", with any additional designations as may be determined to indicate the issuance of bonds from time to time, or notes of the State as provided in this act, in an aggregate principal amount not exceeding two hundred million dollars (\$200,000,000) for the purpose of providing funds, with any other available funds, for the purposes authorized in this act.

Section 5.1. Use of Clean Water Bond and note proceeds.

(a) Special Emphases. The funds to be derived from the sale of the Clean Water Bonds authorized by this act are sufficient to meet no more than a fraction of the needs that now exist and will arise in the immediate future. For this reason, public necessity and the criteria indicated in the appropriate subsection for each allocation of Clean Water Bond proceeds shall be the primary consideration in granting and loaning funds. In addition to public necessity and the applicable criteria, special emphasis shall also be placed on the following:

- (1) The creation of efficient systems of water supply and distribution and wastewater collection and disposal. Such efficiencies may result from the merger or consolidation of smaller systems into regional water and sewer systems where warranted and deemed to be in the best interest of the communities and regions. Such efficiencies may also be obtained through projects proposing water reuse and conservation.
- (2) The willingness and ability of local government units to meet their responsibilities through sound fiscal policies, creative planning, and efficient operation and management.
- (3) The development of a capital improvement plan.
- (4) A reduction in the overall volume of effluent discharged to the State's waters by using alternative methods of wastewater treatment when feasible.
- (5) The use of bond proceeds in a manner consistent with the water supply watershed protection requirements of G.S. 143-214.5.
- (6) The use of bond proceeds to address current critical infrastructure needs.

Special emphasis is achieved by assigning a significant number of points for the items listed in this subsection in any point system developed for awarding clean water grants or loans from the Clean Water Bond proceeds.

The special emphases in this subsection do not apply to the allocation of Clean Water Bond proceeds for State matching funds or economic development under subsections (d) and (e) of this section.

(b) Prohibited Use of Clean Water Bonds Proceeds. Proceeds from the sale of the Clean Water Bonds shall not be used to construct new water or sewer lines to provide water or sewer connections in any area that has been designated as WS-I or the critical area of any area that has been designated as WS-II, WS-III, or WS-IV by the Environmental Management Commission pursuant to G.S. 143-214.5. The Secretary of Environment and Natural Resources may grant a waiver to allow construction of new water or sewer lines and to provide water or sewer connections if the

Secretary finds that granting the waiver is necessary to protect public health or water quality. A waiver granted by the Secretary under this subsection shall include a requirement that the water or sewer line shall be designed and sized to address only the public health or water quality concerns on which the waiver is based and shall not allow for additional connections beyond those necessary to protect public health and water quality. This subsection does not prohibit the repair or replacement of existing water or sewer lines.

In addition, the proceeds shall not be used for the repair, installation, or replacement of a low-pressure pipe wastewater system with another low-pressure pipe wastewater system.

The prohibitions on the use of Clean Water Bond proceeds in this subsection do not apply to the allocation of Clean Water Bond proceeds for State matching funds under subsection (d) of this section.

(c) High-Unit Cost Grants. The proceeds of three hundred thirty million dollars (\$330,000,000) of Clean Water Bonds shall be used by the Department of Environment and Natural Resources to provide grants to local government units for the same purposes and in accordance with the provisions of the Clean Water Revolving Loan and Grant Act for funds in the High-Unit Cost Wastewater Account and the High-Unit Cost Water Supply Account. In addition to the provisions of the Clean Water Revolving Loan and Grant Act and the special emphases in subsection (a) of this section, significant consideration and weight in awarding a clean water grant to an eligible local government unit for expanding infrastructure to support significant additional development shall be given if the applicant, or the local government unit or units having jurisdiction over the service area of the applicant, has adopted a comprehensive land-use plan that meets the requirements of G.S. 159G-10. Any point scheme developed for awarding clean water grants or loans from the clean water bond proceeds for expanding infrastructure to support significant additional development shall assign a significant number of points for having a comprehensive land-use plan that is approved or adopted by the applicant or the local government unit or units having jurisdiction over the service area of the applicant. However, additional points awarded for having a comprehensive land-use plan shall be considered only in the evaluation of competing applications for expanding infrastructure to support additional development and shall not disadvantage other applicants for clean water grants to meet critical infrastructure needs.

The grants shall be made for the purpose of paying the cost of water supply systems, wastewater collection systems, and wastewater treatment works, water conservation projects, water reuse projects, and school water or wastewater projects. The proceeds shall be allocated as follows:

(1) High-Unit Cost Wastewater Account:

- a. Reserved for grants to local government units whose bond rating is less than 75 or who have no bond rating \$85,000,000
- b. Reserved for grants to local government units whose bond

- | | |
|---|---------------|
| rating is 75 or greater | \$80,000,000. |
| (2) High-Unit Cost Water Supply Account: | |
| a. Reserved for grants to local government units whose bond rating is less than 75 or who have no bond rating | \$85,000,000 |
| b. Reserved for grants to local government units whose bond rating is 75 or greater | \$80,000,000. |

The proceeds shall be transferred to the Clean Water Revolving Loan and Grant Fund to make grants to the appropriate local government unit qualifying for a grant from the Clean Water Revolving Loan and Grant Fund in accordance with the provisions of this act and the Clean Water Revolving Loan and Grant Act.

A county may apply for a grant on behalf of a rural school located in the county for a school water or wastewater project.

(d) State Matching Funds. The proceeds of thirty-five million dollars (\$35,000,000) of Clean Water Bonds shall be used by the Department of Environment and Natural Resources to provide State funds necessary for the 1999-2000, 2000-2001, 2001-2002, 2002-2003, and 2003-2004 fiscal years to match the federal wastewater or water supply assistance funds deposited in the Water Pollution Control Revolving Fund or another fund that is used to pay the cost of water supply systems, wastewater collection systems, or wastewater treatment works and is eligible to receive federal matching funds, unless the General Assembly has provided the required match through other sources, in which event this allocation shall cease to exist to the extent of the availability of the other sources. The Department of Environment and Natural Resources shall certify to the State Treasurer the amount of funds required for the State match for each of the fiscal years ending June 30, 2000, June 30, 2001, June 30, 2002, June 30, 2003, and June 30, 2004, and the extent to which the General Assembly has provided other funds for this purpose. Upon certification each year of the amount of funds required for the State match for that fiscal year, the State Treasurer may issue from the thirty-five million dollars (\$35,000,000) the amount certified up to thirty-five million dollars (\$35,000,000). Upon certification for the State match required for the fiscal year ending June 30, 2004, the State Treasurer may issue the remaining balance of the thirty-five million dollars (\$35,000,000) of the Clean Water Bonds authorized by this subsection for the purpose of funding the State match for that fiscal year and for any other purposes authorized by this subsection or subsection (c) of this section. The proceeds of the bonds necessary for the State match for each fiscal year shall be deposited in the Water Pollution Control Revolving Fund or another appropriate fund or account determined by the State Treasurer.

(e) Economic Development. The proceeds of twenty million dollars (\$20,000,000) of Clean Water Bonds shall be used for the purpose of making grants to local government units to pay the cost of clean water projects in connection with the location of industry to, and expansion of industry in, the State. These grants shall be awarded and administered by the Department of Commerce. These funds shall be applied to pay the costs

of grants awarded in the same manner as funds in the Industrial Development Fund created in G.S. 143B-437.01(a), for use in accordance with G.S. 143B-437.01(a), subject to the further limitations on the provisions of G.S. 143B-437.01(a) set forth below, and shall be applied to pay the costs of grants awarded in the same manner as funds in the Utility Account of the Industrial Development Fund created in G.S. 143B-437.01(b1), for use in accordance with G.S. 143B-437.01(b1), subject to the further limitations on the provisions of G.S. 143B-437.01(b1) set forth below. In applying the provisions of G.S. 143B-437.01(a) or G.S. 143B-437.01(b1), as the case may be, the following exceptions shall apply:

- (1) The funds shall be used only for grants to local governments, not for loans.
- (2) Grants shall be awarded only to projects the Secretary of Commerce finds will have a favorable impact on the clean water objectives of the State.
- (3) The only purposes for which grants may be made are construction of or improvements to new or existing water or sewer distribution lines or equipment, construction of or improvements to new or existing wastewater treatment works, or improvements that will expand the capacity of existing wastewater treatment works or water supply systems.
- (4) The projects may be located only in counties that are economically distressed as defined in G.S. 143B-437.01 or have a population of less than 50,000.
- (5) Grants may be made only with respect to the following industries as defined in G.S. 105-129.2, notwithstanding any expiration of that statute: manufacturing and warehousing and wholesale trade.
- (6) The provisions of G.S. 143B-437.01(a) or G.S. 143B-437.01(b1), as the case may be, that limit the expenditure of funds to costs of utility lines or facilities located on the site of the new or proposed industrial building or that are directly related to the operation of the specific industrial activity at the building, shall not apply if the utility lines or facilities being provided will further the clean water objectives of the State.

The General Assembly finds that the purpose of providing water and sewer distribution lines and wastewater treatment works in counties eligible for grants under this subsection is to provide clean water in North Carolina in several different ways. First, these projects will reduce industrial reliance on wells, septic tanks, and other similar facilities. Second, when a distribution line is extended to an industrial facility in an area not otherwise served by water and sewer infrastructure, residents, other businesses, and local governments can connect into the distribution line, bringing clean water, wastewater treatment, or both to the unserved area. Also, the installation and expansion of water supply and wastewater treatment facilities to provide water supply and wastewater treatment in connection with new or expanding industry will result in additional water supply and treatment facilities available to the residents, other businesses, and local governments in the area where the installation or expansion occurs.

The proceeds of the Clean Water Bonds, issued for the purpose described in this subsection, shall be held in the Clean Water Bonds Fund until needed for expenditure by the grantee for the payment of the cost for the purpose for which the grant is made. The Department of Commerce shall maintain records that document the timing and purpose for which each expenditure of proceeds of a grant is made.

(f) Supplemental and Capacity Grants. The proceeds of sixty million dollars (\$60,000,000) of Clean Water Bonds shall be used to provide supplemental and capacity grants to eligible local government units to match federal, State, and other grant or loan program funds to plan or improve needed water and sewer projects. Such grants shall be awarded and administered by the Rural Economic Development Center. Those proceeds shall be allocated as follows:

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| (1) Supplemental Grants | \$48,000,000 |
| (2) Capacity Grants | \$12,000,000. |

The Rural Economic Development Center shall certify to the State Treasurer the amount of funds required, not to exceed eight million dollars (\$8,000,000) for supplemental grants and not to exceed two million dollars (\$2,000,000) for capacity grants, for each of the fiscal years ending June 30, 2000, June 30, 2001, June 30, 2002, June 30, 2003, June 30, 2004, and June 30, 2005. Upon certification each year of the amount of funds required for that fiscal year, the State Treasurer may issue the amount certified up to ten million dollars (\$10,000,000). Upon certification for the fiscal year ending June 30, 2005, the State Treasurer may issue the remaining balance of the sixty million dollars (\$60,000,000) of the Clean Water Bonds authorized by this subsection for any other purposes authorized by this subsection.

Grants made from the proceeds of this sixty million dollars (\$60,000,000) for supplemental grants shall be based on the following criteria:

- (1) The applicant shall be a rural county, a local government unit located in a rural county, or a county that is applying for a grant on behalf of a rural school located in that county as provided in subdivision (5) of this subsection.
- (2) A water supply system, wastewater collection system, or wastewater treatment work shall receive funding priority if the system is located within an economically distressed county as defined in G.S. 143B-437.01.
- (3) A water supply system, wastewater collection system, or wastewater treatment works that is proposed in a rural county that is not also an economically distressed county, as defined in G.S. 143B-437.01, must meet at least one of the following criteria: (i) be located in that part of the county where the poverty rate is at least one hundred fifty percent (150%) of the State poverty rate, (ii) be located in that part of the county where the unemployment rate is at least double the State unemployment rate for the most recent reporting period available, or (iii) be located in that part of the county that experiences an actual or imminent loss of jobs in a number that equals or exceeds five percent (5%) of the total

number of jobs in that part of the county. Any grant awarded under this subdivision (3) shall be matched by the applicant on a dollar-for-dollar basis in the amount of the grant awarded.

- (4) The grant funds shall supplement other funding and shall not represent the total costs of the wastewater collection systems, wastewater treatment works, water conservation projects, water reuse projects, or water supply systems financed.
- (5) A county may apply for a grant on behalf of a rural school located in the county for a school water or wastewater project.

The Rural Economic Development Center shall award grants to units of local government for the purposes authorized by this subsection in accordance with the criteria set forth in this subsection. The proceeds of the Clean Water Bonds issued for the purpose described in this subsection shall be held in the Clean Water Bonds Fund until needed for expenditure by the grantee for the payment of costs for the purposes for which the grant is made. The Rural Economic Development Center shall maintain records that document the timing and purpose for which each expenditure of proceeds of a grant is made and shall furnish such records to the Secretary of Commerce at the time a request for a payment to or on behalf of a grantee is to be made.

At the end of each fiscal year, the Secretary of Commerce shall review the grants awarded by the Rural Economic Development Center with proceeds from the Clean Water Bonds to verify that the grants awarded comply with the requirements of this act. The Secretary of Commerce shall provide his or her findings regarding compliance in writing to the State Treasurer. At the time the Rural Economic Development Center provides information to the Secretary of Commerce as to the grants awarded during the preceding fiscal year, the Rural Economic Development Center shall also provide the Secretary of Commerce with a copy of all records of the Rural Economic Development Center from the preceding fiscal year (to the extent not previously provided to the Secretary) that document the timing and purposes of the expenditures by the grantee units of local government of the proceeds of the grants funded from proceeds of the Clean Water Bonds.

(g) Unsewered Community Grants. The proceeds of fifty-five million dollars (\$55,000,000) of Clean Water Bonds shall be used to provide grants to eligible local government units to assist with wastewater treatment works and wastewater collection systems. Such grants shall be awarded and administered by the Rural Economic Development Center.

The proceeds of this fifty-five million dollars (\$55,000,000) of Clean Water Bonds shall be awarded on the following criteria:

- (1) The applicant shall be a local government unit.
- (2) The applicant's population shall not exceed 5,000 persons using the most recent annual population estimates certified by the State Planning Officer.
- (3) The applicant shall be an unsewered community.
- (4) The applicant's median household income shall not exceed ninety percent (90%) of the national median household income using the most recently updated income figures made available from the Bureau of the Census.

- (5) The applicant has agreed by official resolution to adopt and place into effect on or before completion of the project a schedule of fees and charges for the proper operation, maintenance, and administration of the project. The schedule of fees and charges shall reflect at least the average annual water and wastewater cost per household calculated at one and one-half percent (1 1/2%) of the median household income of the applicant.
- (6) The applicant must submit as part of the application packet a preliminary engineering report, including an analysis of possible wastewater service alternatives, and an environmental assessment.

An applicant who satisfies the criteria under this subsection (g) may be eligible for up to ninety percent (90%) of the total project cost.

The Rural Economic Development Center shall award grants to units of local government for the purposes authorized by this subsection in accordance with the criteria set forth in this subsection. The proceeds of the Clean Water Bonds issued for the purpose described in this subsection shall be held in the Clean Water Bonds Fund until needed for expenditure by the grantee for the payment of costs for the purposes for which the grant is made. The Rural Economic Development Center shall maintain records that document the timing and purpose for which each expenditure of proceeds of a grant is made and shall furnish such records to the Secretary of Commerce at the time a request for payment to or on behalf of a grantee is to be made.

At the end of each fiscal year the Secretary of Commerce shall review the grants awarded by the Rural Economic Development Center with proceeds from the Clean Water Bonds to verify that the grants awarded comply with the requirements of this act. The Secretary of Commerce shall provide his or her findings regarding compliance in writing to the State Treasurer.

At the time that the Rural Economic Development Center provides information to the Secretary of Commerce as to the grants awarded during the preceding fiscal year, the Rural Economic Development Center shall also provide the Secretary of Commerce with a copy of all records of the Rural Economic Development Center from the preceding fiscal year (to the extent not previously provided to the Secretary) that document the timing and purposes of the expenditures by the grantee units of local government of the proceeds of the grants funded from the proceeds of the Clean Water Bonds.

(h) Loans to Local Governments. The proceeds of three hundred million dollars (\$300,000,000) of Clean Water Bonds shall be used for the purpose of making loans to local government units to pay the cost of water supply systems, water conservation projects, water reuse projects, wastewater collection systems, and wastewater treatment works. The proceeds shall be allocated as follows:

- (1) Wastewater collection systems and wastewater treatment works:
 - a. Reserved for loans to local government units whose bond rating is less than 75 or who have no bond rating \$10,000,000
 - b. Reserved for loans to local

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| government units whose bond rating is 75 or more | \$140,000,000. |
| (2) Water supply and distribution systems and water conservation projects: | |
| a. Reserved for loans to local government units whose bond rating is less than 75 or who have no bond rating | \$10,000,000 |
| b. Reserved for loans to local government units whose bond rating is 75 or more | \$140,000,000. |

The proceeds shall be used to make loans directly to local government units qualifying for a loan from the Clean Water Revolving Loan and Grant Fund or loaned in such other manner as shall effectuate the purposes of this act. To qualify for a loan for the purpose of paying the cost of water supply systems, a local government unit must have a water supply facility plan approved by the Department of Environment and Natural Resources. A water supply facility plan submitted by a local government unit to the Department under G.S. 143-355(l) will be sufficient to meet this requirement. To qualify for a loan for the purpose of paying the cost of wastewater collection systems or wastewater treatment works, a local government unit must have a wastewater facility plan approved by the Department of Environment and Natural Resources. A wastewater facility plan must project future wastewater treatment needs, must present a long-range plan to meet those needs, and must include plans for system operations and maintenance of the facilities being built with the bond proceeds. In addition to the requirements listed above and the special emphases in subsection (a) of this section, significant consideration and weight in awarding a clean water grant to an eligible local government unit for expanding infrastructure to support significant additional development shall be given if the applicant, or the local government unit or units having jurisdiction over the service area of the applicant, has adopted a comprehensive land-use plan that meets the requirements of G.S. 159G-10. Any point scheme developed for awarding clean water grants or loans from the clean water bond proceeds for expanding infrastructure to support significant additional development shall assign a significant number of points for having a comprehensive land-use plan that is approved or adopted by the applicant or the local government unit or units having jurisdiction over the service area of the applicant. However, additional points awarded for having a comprehensive land-use plan shall be considered only in the evaluation of competing applications for expanding infrastructure to support significant additional development and shall not disadvantage other applicants for clean water loans to meet critical infrastructure needs.

A county may apply for a loan on behalf of a rural school located in the county for a school water or wastewater project.

The Department of Environment and Natural Resources shall set the priorities and determine the eligibility of local government units for these loans in accordance with Section 10 of this act. The form of the loans and the details thereof including, without limitation, the maturity, interest rate,

and amortization schedule shall be determined, from time to time, by the State Treasurer. In making these determinations, the State Treasurer shall consider the purpose of the loans, the ability of local government units to repay the loans, and the security for the loans. The interest rates on these loans shall reflect the self-supporting nature of the loan program and shall be sufficient to cover substantially all payments of debt service on the three hundred million dollars (\$300,000,000) of Clean Water Bonds and the issuance costs and administrative expenses associated with the issuance of these bonds and the making of these loans, subject to any applicable requirements of the federal tax law.

Repayments of the loans shall be credited to the General Fund and may be used to pay, directly or indirectly, debt service on the bonds and notes issued. Repayments may be initially placed into such fund or account as may be determined by the State Treasurer for the purpose of determining compliance with applicable requirements of the federal tax law and shall be expended and disbursed therefrom under the direction and supervision of the Director of the Budget.

(i) Redistribution of the Allocation. The General Assembly may at this session or at any subsequent session increase or decrease the allocations of the proceeds of the Clean Water Bonds set forth in subsections (c), (d), (e), (f), (g), and (h) of this section, so long as the aggregate amount of the allocations does not exceed eight hundred million dollars (\$800,000,000).

(j) Contracts With Private Entities. To the extent otherwise authorized by law, and to the extent the use otherwise accomplishes the clean water objectives of the State, this act does not prohibit a local government unit from using the proceeds of Clean Water Bonds for projects that accomplish the clean water objectives of this State through contracts or other arrangements with private entities.

Section 5.2. Use of Natural Gas Bonds and note proceeds. The proceeds of Natural Gas Bonds and notes shall be used for the purpose of providing grants, loans, or other financing to natural gas local distribution companies, persons seeking natural gas distribution franchises, State or local government agencies, or other entities for the costs of constructing natural gas facilities, including pipelines, compressors, interests in real property, and related equipment for the delivery of natural gas in order to facilitate the expansion of natural gas facilities to unserved areas of the State in accordance with the findings of the General Assembly as described in Section 16 of this act.

Section 6. Allocation of proceeds.

(a) Clean Water Bonds. The proceeds of Clean Water Bonds and notes, including premium thereon, if any, except the proceeds of bonds the issuance of which has been anticipated by bond anticipation notes or the proceeds of refunding bonds or notes, shall be placed by the State Treasurer in a special fund to be designated "Clean Water Bonds Fund", which may include such appropriate special accounts therein as may be determined by the State Treasurer and shall be disbursed as provided in this act. Moneys in the Clean Water Bonds Fund shall be allocated and expended as provided in this act.

Any additional moneys which may be received by means of a grant or grants from the United States of America or any agency or department thereof or from any other source for deposit to the Clean Water Bonds Fund may be placed in the Clean Water Bonds Fund or in a separate account or fund and shall be disbursed, to the extent permitted by the terms of the grant or grants, without regard to any limitations imposed by this act.

Moneys in the Clean Water Bonds Fund or any separate clean water fund or account established under this act may be invested from time to time by the State Treasurer in the same manner permitted for investment of moneys belonging to the State or held in the State treasury, except with respect to grant money to the extent otherwise directed by the terms of the grant. Investment earnings, except investment earnings with respect to grant moneys to the extent otherwise directed or restricted by the terms of the grant, may be (i) credited to the Clean Water Bonds Fund or any separate clean water fund or account established under this act, (ii) used to pay debt service on the bonds authorized by this act, (iii) used to satisfy compliance with applicable requirements of the federal tax law, or (iv) transferred to the General Fund of the State.

The proceeds of bonds and notes may be used with any other moneys made available by the General Assembly for making grants and loans authorized by this act, including the proceeds of any other State bond issues, whether heretofore made available or which may be made available at the session of the General Assembly at which this act is ratified or any subsequent sessions. The proceeds of bonds and notes shall be expended and disbursed under the direction and supervision of the Director of the Budget. The funds provided by this act shall be disbursed for the purposes provided in this act upon warrants drawn on the State Treasurer by the State Controller, which warrants shall not be drawn until requisition has been approved by the Director of the Budget and which requisition shall be approved only after full compliance with the Executive Budget Act, Article 1 of Chapter 143 of the General Statutes.

(b) Natural Gas Bonds. The proceeds of Natural Gas Bonds and notes, including premium thereon, if any, except the proceeds of bonds the issuance of which has been anticipated by bond anticipation notes or the proceeds of refunding bonds or notes, shall be placed by the State Treasurer in a special fund to be designated "Natural Gas Bonds Fund", which may include such appropriate special accounts therein as may be determined by the State Treasurer, and shall be disbursed as provided in this act. Moneys in the Natural Gas Bonds Fund shall be allocated and expended as provided in this act. The proceeds may be used in accordance with G.S. 62-159 or may be distributed in accordance with the provisions of legislation enacted by the General Assembly in 1998 or later providing for the allocation of the bond proceeds for the purposes provided in this act.

Any additional moneys which may be received by means of a grant or grants from the United States of America or any agency or department thereof or from any other source to aid in financing the cost of any natural gas grants authorized by this act may be placed by the State Treasurer in the Natural Gas Bonds Fund or in a separate account or fund and shall be

disbursed, to the extent permitted by the terms of the grant or grants, without regard to any limitations imposed by this act.

Moneys in the Natural Gas Bonds Fund or any separate natural gas fund or account established under this act may be invested from time to time by the State Treasurer in the same manner permitted for investment of moneys belonging to the State or held in the State treasury, except with respect to grant money to the extent otherwise directed by the terms of the grant. Investment earnings, except investment earnings with respect to grant money to the extent otherwise directed or restricted by the terms of the grant, may be (i) credited to the Natural Gas Bonds Fund or any separate natural gas fund or account established under this act; (ii) used to pay debt service on the Natural Gas Bonds authorized by this act; (iii) used to satisfy compliance with applicable requirements of the federal tax law; or (iv) transferred to the General Fund of the State.

The proceeds of Natural Gas Bonds and notes may be used with any other moneys made available by the General Assembly for providing grants, loans, or other financing in accordance with this act, including the proceeds of any other State bond issues, whether heretofore made available or which may be made available at the session of the General Assembly at which this act is ratified or any subsequent sessions. The proceeds of Natural Gas Bonds and notes shall be expended and disbursed under the direction and supervision of the Director of the Budget. The funds provided by this act for construction of natural gas facilities shall be disbursed for the purposes provided in this act upon warrants drawn on the State Treasurer by the State Controller, which warrants shall not be drawn until requisition has been approved by the Director of the Budget and which requisition shall be approved only after full compliance with the Executive Budget Act, Article 1 of Chapter 143 of the General Statutes.

The North Carolina Utilities Commission shall provide quarterly reports to the Joint Legislative Commission on Governmental Operations, the Chairs of the Senate and House of Representatives Appropriations Committees, and the Fiscal Research Division on the expenditure of moneys from the Natural Gas Bonds Fund.

(c) Costs. Allocations to the costs of a capital improvement or undertaking in each case may include allocations to pay the costs set forth in Section 3(7)c., d., e., f., and g. of this act in connection with the issuance of bonds for that capital improvement or undertaking.

Section 7. Election. The questions of the issuance of the bonds authorized by this act shall be submitted to the qualified voters of the State at an election to be held on the first Tuesday after the first Monday of November 1998. Any other primary, election, or referendum validly called or scheduled by law at the time the election on the bond question provided for in this section is held may be held as called or scheduled. Notice of the election shall be given in the manner and at the times required by G.S. 163-33(8). The election and the registration of voters therefor shall be held under and in accordance with the general laws of the State. Absentee ballots shall be authorized in the election.

The State Board of Elections shall reimburse the counties of the State for all necessary expenses incurred in holding the election that are in

addition to those that would have otherwise been incurred, the same to be paid out of the Contingency and Emergency Fund or other funds available to the State Board of Elections.

Ballots, voting systems authorized by Article 14 of Chapter 163 of the General Statutes, or both may be used in accordance with rules prescribed by the State Board of Elections. The bond questions to be used in the ballots or voting systems shall be in substantially the following form:

"[] FOR [] AGAINST

the issuance of eight hundred million dollars (\$800,000,000) State of North Carolina Clean Water Bonds constituting general obligation bonds of the State secured by a pledge of the faith and credit and taxing power of the State for the purpose of providing funds, with any other available funds, to make loans and grants to local government units to pay all or a portion of the cost of clean water projects."

"[] FOR [] AGAINST

the issuance of two hundred million dollars (\$200,000,000) State of North Carolina Natural Gas Bonds constituting general obligation bonds of the State secured by a pledge of the faith and credit and taxing power of the State for the purpose of providing funds, with any other available funds, to provide grants, loans, or other financing to public or private entities for construction of natural gas facilities in order to facilitate the expansion of natural gas facilities to unserved portions of the State."

If a majority of those voting on a bond question in the election vote in favor of the issuance of the bonds described in the question, those bonds may be issued as provided in this act. If a majority of those voting on a bond question in the election vote against the issuance of the bonds described in the question, those bonds shall not be issued.

The results of the election shall be canvassed and declared as provided by law for elections for State officers; the results of the election shall be certified by the State Board of Elections to the Secretary of State, in the manner and at the time provided by the general election laws of the State.

Section 8. Issuance of bonds and notes.

(a) Terms and Conditions. Bonds or notes may bear such date or dates, may be serial or term bonds or notes, or any combination thereof, may mature in such amounts and at such time or times, not exceeding 40 years from their date or dates, may be payable at such place or places, either within or without the United States of America, in such coin or currency of the United States of America as at the time of payment is legal tender for payment of public and private debts, may bear interest at such rate or rates, which may vary from time to time, and may be made redeemable before maturity, at the option of the State or otherwise as may be provided by the State, at such price or prices, including a price less than the face amount of the bonds or notes, and under such terms and conditions, all as may be determined by the State Treasurer, by and with the consent of the Council of State.

(b) Signatures; Form and Denomination; Registration. Bonds or notes may be issued as certificated or uncertificated obligations. If issued as certificated obligations, bonds or notes shall be signed on behalf of the State by the Governor or shall bear his or her facsimile signature, shall be signed

by the State Treasurer or shall bear his or her facsimile signature, and shall bear the Great Seal of the State or a facsimile thereof shall be impressed or imprinted thereon. If bonds or notes bear the facsimile signatures of the Governor and the State Treasurer, the bonds or notes shall also bear a manual signature which may be that of a bond registrar, trustee, paying agent, or designated assistant of the State Treasurer. Should any officer whose signature or facsimile signature appears on bonds or notes cease to be such officer before the delivery of the bonds or notes, the signature or facsimile signature shall nevertheless have the same validity for all purposes as if the officer had remained in office until delivery, and bonds or notes may bear the facsimile signatures of persons who at the actual time of the execution of the bonds or notes shall be the proper officers to sign any bond or note although at the date of the bond or note such persons may not have been such officers. The form and denomination of bonds or notes, including the provisions with respect to registration of the bonds or notes and any system for their registration, shall be as the State Treasurer may determine in conformity with this act; provided, however, that nothing in this act shall prohibit the State Treasurer from proceeding, with respect to the issuance and form of the bonds or notes, under the provisions of Chapter 159E of the General Statutes, the Registered Public Obligations Act, as well as under this act.

(c) Manner of Sale; Expenses. Subject to determination by the Council of State as to the manner in which bonds or notes shall be offered for sale, whether at public or private sale, whether within or without the United States of America, and whether by publishing notices in certain newspapers and financial journals, mailing notices, inviting bids by correspondence, negotiating contracts of purchase or otherwise, the State Treasurer is authorized to sell bonds or notes at one time or from time to time at such rate or rates of interest, which may vary from time to time, and at such price or prices, including a price less than the face amount of the bonds or the notes, as the State Treasurer may determine. All expenses incurred in preparation, sale, and issuance of bonds or notes shall be paid by the State Treasurer from the proceeds of bonds or notes or other available moneys.

(d) Notes; Repayment.

(1) By and with the consent of the Council of State, the State Treasurer is hereby authorized to borrow money and to execute and issue notes of the State for the same, but only in the following circumstances and under the following conditions:

- a. For anticipating the sale of bonds to the issuance of which the Council of State shall have given consent, if the State Treasurer shall deem it advisable to postpone the issuance of the bonds;
- b. For the payment of interest on or any installment of principal of any bonds then outstanding, if there shall not be sufficient funds in the State treasury with which to pay the interest or installment of principal as they respectively become due;
- c. For the renewal of any loan evidenced by notes herein authorized;

- d. For the purposes authorized in this act; and
- e. For refunding bonds or notes as herein authorized.

(2) Funds derived from the sale of bonds or notes may be used in the payment of any bond anticipation notes issued under this act. Funds provided by the General Assembly for the payment of interest on or principal of bonds shall be used in paying the interest on or principal of any notes and any renewals thereof, the proceeds of which shall have been used in paying interest on or principal of the bonds.

(e) Refunding Bonds and Notes. By and with the consent of the Council of State, the State Treasurer is authorized to issue and sell refunding bonds and notes pursuant to the provisions of the State Refunding Bond Act for the purpose of refunding bonds or notes issued pursuant to this act. The refunding bonds and notes may be combined with any other issues of State bonds and notes similarly secured.

(f) Tax Exemption. Bonds and notes shall be exempt from all State, county, and municipal taxation or assessment, direct or indirect, general or special, whether imposed for the purpose of general revenue or otherwise, excluding inheritance and gift taxes, income taxes on the gain from the transfer of bonds and notes, and franchise taxes. The interest on bonds and notes shall not be subject to taxation as to income.

(g) Investment Eligibility. Bonds and notes are hereby made securities in which all public officers, agencies, and public bodies of the State and its political subdivisions, all insurance companies, trust companies, investment companies, banks, savings banks, savings and loan associations, credit unions, pension or retirement funds, other financial institutions engaged in business in the State, executors, administrators, trustees, and other fiduciaries may properly and legally invest funds, including capital in their control or belonging to them. Bonds and notes are hereby made securities which may properly and legally be deposited with and received by any officer or agency of the State or political subdivision of the State for any purpose for which the deposit of bonds, notes, or obligations of the State or any political subdivision is now or may hereafter be authorized by law.

(h) Faith and Credit. The faith and credit and taxing power of the State are hereby pledged for the payment of the principal of and the interest on bonds and notes. In addition to the State's right to amend any provision of this act to the extent it does not impair any contractual right of a bond owner, the State expressly reserves the right to amend any provision of this act with respect to the making and repayment of loans, the disposition of any repayments of loans, and any intercept provisions relating to the failure of a local government unit to repay a loan, the bonds not being secured in any respect by loans, any repayments thereof, or any intercept provisions with respect thereto.

Section 9. Variable interest rates. In fixing the details of bonds and notes, the State Treasurer may provide that any of the bonds or notes may:

- (1) Be made payable from time to time on demand or tender for purchase by the owner thereof provided a credit facility supports the bonds or notes, unless the State Treasurer specifically determines that a credit facility is not required upon a finding and

determination by the State Treasurer that the absence of a credit facility will not materially or adversely affect the financial position of the State and the marketing of the bonds or notes at a reasonable interest cost to the State;

- (2) Be additionally supported by a credit facility;
- (3) Be made subject to redemption or a mandatory tender for purchase prior to maturity;
- (4) Bear interest at a rate or rates that may vary for such period or periods of time, all as may be provided in the proceedings providing for the issuance of the bonds or notes, including, without limitation, such variations as may be permitted pursuant to a par formula; and
- (5) Be made the subject of a remarketing agreement whereby an attempt is made to remarket bonds or notes to new purchasers prior to their presentment for payment to the provider of the credit facility or to the State.

If the aggregate principal amount repayable by the State under a credit facility is in excess of the aggregate principal amount of bonds or notes secured by the credit facility, whether as a result of the inclusion in the credit facility of a provision for the payment of interest for a limited period of time or the payment of a redemption premium or for any other reason, then the amount of authorized but unissued bonds or notes during the term of such credit facility shall not be less than the amount of such excess, unless the payment of such excess is otherwise provided for by agreement of the State executed by the State Treasurer.

Section 10. Special provisions governing clean water loans.

(a) Scope. The provisions of this section shall apply to loans being made from the proceeds of bonds authorized by this act for clean water projects, other than from funds deposited in the Clean Water Revolving Loan and Grant Fund.

(b) Clean Water Bonds Loan Account. There is established in the Department of State Treasurer a special account to be known as the Clean Water Bonds Loan Account, which may include any special or segregated accounts the State Treasurer considers appropriate. There shall be deposited in the Clean Water Bonds Loan Account proceeds of the Clean Water Bonds and notes to be used to make loans, other than loans to be made through the Clean Water Revolving Loan and Grant Fund, to local government units for clean water projects as provided in this act.

Except as otherwise permitted by Section 6 of this act with respect to the use of investment earnings, all moneys accruing to the credit of the Clean Water Bonds Loan Account other than funds set aside for administrative expenses, including expenses related to determining compliance with applicable requirements of the federal tax law and costs of issuance, shall be used to make loans for the purposes provided in this act. The State Treasurer shall be responsible for making and administering all loans pursuant to the provisions of this section.

(c) Application for Loans; Hearings.

(1) Eligibility/Initial Hearing:

- a. Prior to filing an application for a loan, a local government unit shall hold a public hearing. A notice of the public hearing shall be published once at least 10 days before the date fixed for the hearing.
 - b. All applications for loans shall be filed with the Department of Environment and Natural Resources. The form of the application shall be prescribed by the Department and shall require any information necessary to determine the eligibility for a loan under the provisions of this section. All applications approved by the Department of Environment and Natural Resources shall be filed with the Local Government Commission. Each applicant shall furnish to the Department of Environment and Natural Resources and the Local Government Commission information in addition or supplemental to the information contained in its application, upon request.
 - c. A local government unit shall not be eligible for a loan unless it demonstrates to the satisfaction of the Department of Environment and Natural Resources and the Local Government Commission that:
 1. The applicant is a local government unit;
 2. The applicant has the financial capacity to pay the principal of and interest on its proposed loan as evidenced by the approval of the Local Government Commission;
 3. The applicant has substantially complied or will substantially comply with all applicable laws, rules, regulations, and ordinances, whether federal, State, or local; and
 4. The applicant has agreed by official resolution to adopt and place into effect a schedule of fees and charges or the application of other sources of revenue which will provide adequate funds for proper operation, maintenance, and administration of the project and repayment of all principal and interest on the loan.
- (2) **Assessment.** The Department of Environment and Natural Resources may require any applicant to file with its application an assessment of the impact the project for which the funds are sought will have upon meeting the facility needs of the area within which the project is to be located.
- (3) **Hearing by the Department of Environment and Natural Resources or the Local Government Commission.** A public hearing may be held by the Department of Environment and Natural Resources or the Local Government Commission at any time on any application. Public hearings may also be held by the Department of Environment and Natural Resources in its discretion upon written request from any citizen or taxpayer who is a resident of the county or counties in which the project is to be located or a resident of the local government unit that proposes to borrow moneys under this act, if it appears that the public interest will be

served by the hearing. The written request shall set forth each objection to the proposed project or other reason for requesting a hearing on the application and shall contain the name and address of the persons submitting it. In deciding whether to grant a request for a hearing on an application, the Department of Environment and Natural Resources may consider the application, the written objections to the proposed project, and the facility needs and shall determine if the public interest will be served by a hearing. The determination by the Department of Environment and Natural Resources shall be conclusive, and all written requests for a hearing shall be retained as a permanent part of the records pertaining to the application.

- (4) **Petition for Vote.** A petition, demanding that the question of whether to enter into a loan agreement with the State under this act be submitted to voters, may be filed with the clerk of the local government unit applying for the loan within 15 days after the public hearing required by this section. The petition's sufficiency shall be determined and a referendum, if any, shall be conducted according to the standards, procedures, and limitations set out in G.S. 159-60 through G.S. 159-62.
- (d) **Priorities.**
 - (1) **Determination.** Determination of priorities to be assigned each eligible project shall be made semiannually by the Department of Environment and Natural Resources during each fiscal year. Every eligible project shall be considered by the Department of Environment and Natural Resources with every other project eligible during this same priority period.
 - (2) **Priority Factors.** All applications for loans under this act shall be assigned a priority by the Department of Environment and Natural Resources. The Department of Environment and Natural Resources shall establish other priority factors criteria by rule.
 - (3) **Assignment of Priority.** A written statement relative to each priority assigned shall be prepared by the Department of Environment and Natural Resources and shall be attached to the application. The priority assigned shall be conclusive.
 - (4) **Failure to Qualify.** If an application does not qualify for a loan as of the prior period in which the application was eligible for consideration by reason of the priority assigned, the application shall be considered during the next succeeding priority period upon request of the applicant. If the application again fails to qualify for a loan during the second priority period by reason of the priority assigned, the application shall receive no further consideration. An applicant may file a new application at any time and may amend any pending application to include additional data or information.
 - (5) **Withdrawal of Commitment.** Failure of an applicant within one year after the date of acceptance of the loan to arrange for necessary financing of the proposed project or award of the contract of the construction of the proposed project shall constitute

sufficient cause for withdrawal of the commitment. Prior to withdrawal of a commitment, the Department of Environment and Natural Resources shall give due consideration to any extenuating circumstances presented by the applicant as reasons for failure to arrange necessary financing or to award a contract, and the commitment may be extended for an additional period of time if, in the judgment of the Department of Environment and Natural Resources, the extension is justified.

(e) Disbursement. To be eligible to receive the loans provided for in this section, a local government unit must arrange to borrow the amounts necessary pursuant to rules adopted by the Local Government Commission. No funds shall be disbursed until the Department of Environment and Natural Resources gives a certificate of eligibility to the effect that the applicant meets all eligibility criteria and that all procedural requirements of this act have been met. The maximum principal amount of a loan shall be one hundred percent (100%) of the cost of any eligible project.

(f) Intercept. The governing body of a local government unit shall by resolution authorize to be included in its loan agreement a provision authorizing the State Treasurer, upon failure of the local government unit to make a scheduled repayment of the loan, to withhold from the local government unit any State funds that would otherwise be distributed to the local government unit in an amount sufficient to pay all sums then due and payable to the State as a repayment of the loan. In such event, notwithstanding any other provision of law, the State Treasurer is authorized to withhold and apply such funds to the repayment of the loan, except that such funds shall not be withheld if (i) before the execution of the loan agreement, such funds have been legally pledged to secure special obligation bonds or other obligations of the local government unit, or (ii) after the execution of the loan agreement, such funds are legally pledged to secure special obligation bonds or other obligations of the local government unit as authorized in this subsection. After the execution of a loan agreement, all or any portion of the State funds specified in the loan agreement to be so withheld may be pledged to secure special obligation bonds or other obligations of the local government unit only with the prior written consent of the State Treasurer.

The State Treasurer shall notify the Secretary of Revenue and the State Controller of the amount to be withheld from the local government unit, and the Secretary of Revenue and the State Controller shall transfer to the State Treasurer the amount so requested to be applied by the State Treasurer to the repayment of the loan.

(g) Inspection. Inspection of a project for which a loan has been made under this act may be performed by qualified personnel of the Department of Environment and Natural Resources or may be performed by qualified engineers registered in this State approved by the Department of Environment and Natural Resources. No person shall be approved to perform inspections who is an officer employed by the local government unit to which the loan was made or who is an owner, officer, employer, or agent of a contractor or subcontractor engaged in the construction of the project for which the loan was made. For the purpose of payment of inspection

fees, inspection services shall be included in the term "cost" as used in this act.

(h) Rules. The State Treasurer, the Local Government Commission, and the Department of Environment and Natural Resources may adopt, modify, and repeal rules necessary for the administration of their respective duties under this act. Uniform rules may be jointly adopted where feasible and desirable, and no rule, jointly adopted, may be modified or revoked except upon concurrence of all agencies involved.

(i) Federal Grants and Loans. In order to carry out the purposes of this act to secure the greatest possible benefits to the citizens of this State of the funds appropriated, the State Treasurer, the Local Government Commission, and the Department of Environment and Natural Resources shall adopt rules and criteria, not inconsistent with provisions of this act, as are necessary and appropriate to conform to regulations for federal grants and loans for any of the purposes set forth in this act.

(j) Report by Department of Environment and Natural Resources. The Department of Environment and Natural Resources shall prepare and file each year on or before July 31 with the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division a report for the preceding fiscal year concerning the allocation and making of loans authorized by this act. The report shall set forth for the preceding fiscal year:

- (1) Itemized and total allocations of loans authorized and unallocated funds for the loan program as of the end of the preceding fiscal year;
- (2) Identification of each loan agreement entered into by the State during the preceding fiscal year and the total amount of loans authorized by such loan agreements;
- (3) The amount disbursed to each local government unit pursuant to such loan agreements during the preceding fiscal year and the total amount of such disbursements;
- (4) The loan repayments made by each local government unit pursuant to such loan agreements and the total amount of such loan repayments during the preceding fiscal year; and
- (5) A summary for the five preceding years of the information required by subdivisions (1) through (4) of this subsection.

The report shall be signed by the Secretary of Environment and Natural Resources.

(k) Local Government Commission.

- (1) Local government units may execute debt instruments payable to the State in order to obtain loans provided for in this act. Local government units shall pledge or agree to apply as security for such obligations:
 - a. Any available source of revenues of the local government unit, including revenues from benefitted facilities or systems, provided that (i) the local government unit has not otherwise pledged the revenues as security for, or contractually agreed to apply the revenues to, the payment of any other obligations of the local government unit, (ii) the use of the revenues is not

otherwise restricted by law, or (iii) the revenues are not derived from the exercise of the local government unit's taxing power; or

b. Their faith and credit; or

c. Any combination of a. or b. above.

The faith and credit of a local government unit shall not be pledged or be deemed to have been pledged unless the requirements of Article 4 of Chapter 159 of the General Statutes have been met. The State Treasurer, with the assistance of the Local Government Commission, shall develop and adopt appropriate debt instruments for use under this act.

- (2) Nothing contained in this act shall prohibit any local government unit from applying any funds of the local government unit not otherwise restricted as to use by law to the payment of any debt instrument payable to the State incurred pursuant to the provisions of this act.
- (3) The Local Government Commission shall review and approve proposed loans to local government units under this act under the provisions of Articles 4 and 5 of Chapter 159 of the General Statutes. The Local Government Commission in considering the ability of a local government unit to repay a loan may regard as a source of revenue for repayment of a loan revenue sources that may not be available other than on an annual discretionary basis and that may not be subject to a pledge or agreement to apply. Loans under this act shall be outstanding debts for the purposes of Article 10 of Chapter 159 of the General Statutes.
- (4) The State Treasurer shall annually certify to the General Assembly the financial condition of the loan program and identify existing delinquencies.

Section 11. Reports on Grants.

(a) The Rural Economic Development Center shall prepare and file each year on or before July 31 with the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division a report for the preceding fiscal year concerning the allocation and making of grants authorized by this act. The report shall be signed by the Chair of the Board of Directors of the Rural Economic Development Center. The report shall set forth for the preceding fiscal year:

- (1) Itemized and total allocations of grants authorized and unallocated funds for the grant program as of the end of the preceding fiscal year;
- (2) Identification of each grant agreement entered into by the Rural Economic Development Center during the preceding fiscal year and the total amount of grants authorized by the grant agreements;
- (3) The amount disbursed to each local government unit pursuant to the grant agreements during the preceding fiscal year and the total amount of the disbursements; and
- (4) A summary for the five preceding years of the information required by subdivisions (1) through (3) of this subsection.

(b) The Department of Environment and Natural Resources shall prepare and file each year on or before July 31 with the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division a report for the preceding fiscal year concerning the allocation and making of grants authorized by this act. The report shall be signed by the Secretary of Environment and Natural Resources. The report shall set forth for the preceding fiscal year:

- (1) Itemized and total allocations of grants authorized and unallocated funds for the grant program as of the end of the preceding fiscal year;
- (2) Identification of each grant agreement entered into by the Department of Environment and Natural Resources during the preceding fiscal year and the total amount of grants authorized by the grant agreements;
- (3) The amount disbursed to each local government unit pursuant to the grant agreements during the preceding fiscal year and the total amount of the disbursements; and
- (4) A summary for the five preceding years of the information required by subdivisions (1) through (3) of this subsection.

(c) The Department of Commerce shall prepare and file each year on or before July 31 with the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division a report for the preceding fiscal year concerning the allocation and making of grants authorized by this act. The report shall be signed by the Secretary of Commerce. The report shall set forth for the preceding fiscal year:

- (1) Itemized and total allocations of grants authorized and unallocated funds for the grant program as of the end of the preceding fiscal year;
- (2) Identification of each grant agreement entered into by the Department of Commerce during the preceding fiscal year and the total amount of grants authorized by the grant agreements;
- (3) The amount disbursed to each local government unit pursuant to the grant agreements during the preceding fiscal year and the total amount of the disbursements; and
- (4) A summary for the five preceding years of the information required by subdivisions (1) through (3) of this subsection.

Section 12. Minority business participation. The goals set by G.S. 143-128 for participation in projects by minority businesses apply to projects funded by the proceeds of bonds or notes issued under this act. The Department of Environment and Natural Resources, the Department of Commerce, and the Rural Economic Development Center shall monitor compliance with this requirement and shall report to the General Assembly by January 1 of each year on the participation by minority businesses in these projects.

Section 13. Interpretation of act.

(a) Additional Method. The foregoing sections of this act shall be deemed to provide an additional and alternative method for the doing of the things authorized thereby and shall be regarded as supplemental and

additional to powers conferred by other laws, and shall not be regarded as in derogation of any powers now existing.

(b) Statutory References. References in this act to specific sections or Chapters of the General Statutes or to specific acts are intended to be references to these sections, Chapters, or acts as they may be amended from time to time by the General Assembly.

(c) Broad Construction. This act, being necessary for the health and welfare of the people of the State, shall be broadly construed to effect the purposes thereof.

(d) Inconsistent Provisions. Insofar as the provisions of this act are inconsistent with the provisions of any general laws, or parts thereof, the provisions of this act shall be controlling.

(e) Severability. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

Section 14. Chapter 143 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 72.

"State Infrastructure Council.

"§ 143-690. Council established; purpose; members; terms of office; quorum; compensation; termination.

(a) Establishment. -- There is established the State Infrastructure Council. The Council shall be located within the Department of Environment and Natural Resources for organizational, budgetary, and administrative purposes.

(b) Purpose. -- The purpose of the Council is to develop a State strategic plan that addresses North Carolina's water supply and distribution and wastewater treatment needs.

(c) Membership. -- The Council shall consist of 19 members, five of whom are ex officio and 14 of whom are appointed as follows:

(1) Four persons appointed by the Governor.

(2) Five persons appointed by the President Pro Tempore of the Senate, at least one of whom must be a member of the Senate.

(3) Five persons appointed by the Speaker of the House of Representatives, at least one of whom must be a member of the House of Representatives.

(4) The following persons or their designees, ex officio:

a. The Secretary of Commerce.

b. The Secretary of Environment and Natural Resources.

c. The State Treasurer.

d. The Executive Director of the League of Municipalities.

e. The Executive Director of the North Carolina Association of County Commissioners.

The members appointed to the State Infrastructure Council shall be chosen from among individuals who have the ability and commitment to promote and fulfill the purposes of the Council, including individuals who have demonstrated expertise in the fields of environmental science,

particularly the areas of wastewater treatment and water supply and distribution, public planning, public financing, public health, and economic development.

(d) Terms. -- Members shall serve for two-year terms, with no prohibition against being reappointed, except initial appointments shall be for terms as follows:

- (1) The Governor shall initially appoint two members for terms of two years and two members for terms of three years.
- (2) The President Pro Tempore of the Senate shall initially appoint two members for terms of two years and three members for terms of three years.
- (3) The Speaker of the House of Representatives shall initially appoint two members for terms of two years and three members for terms of three years.

Initial terms shall begin on January 1, 1999.

(e) Chair. -- The chair shall be appointed biennially by the Governor from among the membership of the Council. The initial term shall begin on January 1, 1999.

(f) Vacancies. -- A vacancy in the Council or as chair of the Council resulting from the resignation of a member or otherwise shall be filled in the same manner in which the original appointment was made and the term shall be for the balance of the unexpired term.

(g) Compensation. -- The Council members shall receive no salary as a result of serving on the Council but shall receive per diem, subsistence, and travel expenses in accordance with the provisions of G.S. 120-3.1, 138-5, and 138-6, as applicable.

(h) Removal. -- Members may be removed in accordance with G.S. 143B-13 as if that section applied to this Article.

(i) Meetings. -- The chair shall convene the Council. Meetings shall be held as often as necessary, but not fewer than four times a year.

(j) Quorum. -- A majority of the members of the Council shall constitute a quorum for the transaction of business. The affirmative vote of a majority of the members present at meetings of the Council shall be necessary for action to be taken by the Council.

"§ 143-691. Duties of the Council.

Duties. -- The Council shall have the following duties:

- (1) To plan and develop a State strategic plan that addresses North Carolina's water supply and distribution and wastewater treatment needs.
- (2) To evaluate the State's natural resource base and existing water and sewer systems and to project statewide future needs for water and sewer systems.
- (3) To analyze current and proposed statutes, rules, and programs that address or affect State water and sewer needs.
- (4) To analyze the roles of State and local government and other parties in addressing water and sewer needs and to recommend the appropriate roles for each with regard to addressing future water and sewer needs.

- (5) To anticipate the impact of infrastructure development on natural resources and to make recommendations on how to minimize the impact.

"§ 143-692. Staff and offices.

The Department of Environment and Natural Resources shall provide office space and staff for the State Infrastructure Council as requested by the Council.

"§ 143-693. Council reports.

The Council shall report to the Joint Legislative Commission on Governmental Operations, with a written report to the Fiscal Research Division, by October 1, 1999, and annually thereafter, regarding the implementation of this Article. In its report the Council shall include any recommendations regarding statewide water and sewer needs that require review or action by the General Assembly."

Section 15. G.S. 159G-6 reads as rewritten:

"§ 159G-6. Distribution of funds.

(a) Revolving loans and grants.

- (1) All funds appropriated or accruing to the Clean Water Revolving Loan and Grant Fund, other than funds set aside for administrative expenses, shall be used for revolving loans and grants to local government units for construction costs of wastewater treatment works, wastewater collection systems and water supply systems and other assistance as provided in this Chapter.
- (2) The maximum principal amount of a revolving loan or a grant may be one hundred percent (100%) of the nonfederal share of the construction costs of any eligible project. The maximum principal amount of revolving loans made to any one local government unit during any fiscal year shall be ~~three~~ eight million dollars ~~(\$3,000,000).~~ (\$8,000,000). The maximum principal amount of grants made to any one local government unit during any fiscal year shall be ~~one~~ three million dollars ~~(\$1,000,000).~~ (\$3,000,000).
- (3) The State Treasurer shall be responsible for investing and distributing all funds appropriated or accruing to the Clean Water Revolving Loan and Grant Fund for revolving loans and grants under this Chapter. In fulfilling his or her responsibilities under this section, the State Treasurer shall make a written request to the Department of Environment and Natural Resources to arrange for the appropriated funds to be (i) transferred from the appropriate accounts to a local government unit to provide funds for one or more revolving loans or grants or (ii) invested as authorized by this Chapter with the interest on and the principal of such investments to be transferred to the local government unit to provide funds for one or more revolving loans or grants.

(b) Wastewater Accounts. -- The sums allocated in G.S. 159G-4 and accruing to the various Wastewater Accounts in each fiscal year shall be used to make revolving loans and grants to local government units as provided below. The Department of Environment and Natural Resources shall disburse no funds from the Wastewater Accounts except upon receipt

of written approval of the disbursement from the Environmental Management Commission.

- (1) General Wastewater Revolving Loan and Grant Account. -- The funds in the General Wastewater Revolving Loan and Grant Account shall be used exclusively for the purpose of providing for revolving construction loans or grants in connection with approved wastewater treatment work or wastewater collection system projects.
 - (2) High-Unit Cost Wastewater Account. -- The funds in the High-Unit Cost Wastewater Account shall be available for grants to applicants for high-unit cost wastewater projects. Eligibility of an applicant for such a grant shall be determined by comparing estimated average household user fees for water and sewer service, for debt service and operation and maintenance costs, to one and one-half percent (1.5%) of the median household income in the ~~county~~ local government unit in which the project is located. The projects which would require estimated average household water and sewer user fees greater than one and one-half percent (1.5%) of the median household income are defined as high-unit cost wastewater projects and will be eligible for a grant equal to the excess cost, subject to the limitations in ~~subsection~~ subdivision (a)(2) of this section.
 - (3) Emergency Wastewater Revolving Loan Account. -- The funds in the Emergency Wastewater Revolving Loan Account shall be available for revolving emergency loans to applicants in the event the Environmental Management Commission certifies that a serious public health hazard, related to the inadequacy of existing wastewater facilities, is present or imminent in a community.
- (c) Water Supply Accounts. -- The sums allocated in G.S. 159G-4 and accruing to the various Water Supply Accounts in each fiscal year shall be used to provide revolving loans and grants to local government units as provided below. The Department of Environment and Natural Resources shall disburse no funds from the Water Supply Accounts except upon receipt of written approval of the disbursement from the Division of Environmental Health.
- (1) General Water Supply Revolving Loan and Grant Account. -- The funds in the General Water Supply Revolving Loan and Grant Account shall be used exclusively for the purpose of providing for revolving construction loans and grants in connection with water supply systems generally and not upon a county allotment basis.
 - (2) High-Unit Cost Water Supply Account. -- The funds in the High-Unit Cost Water Supply Account shall be available for grants to applicants for high-unit cost water supply systems, on the same basis as provided in G.S. 159G-6(b)(2) for high-unit cost wastewater projects.
 - (3) Emergency Water Supply Revolving Loan Account. -- The funds in the Emergency Water Supply Revolving Loan Account shall be available for revolving emergency loans to applicants in the event the Division of Environmental Health certifies that a serious public

health hazard, related to the water supply system, is present or imminent in a community.

(d) Repealed by Session Laws 1991, c. 186, s. 4.

(e) Notwithstanding any other provision of this Chapter, funds in the Water Pollution Control Revolving Fund shall not be available as grants except to the extent permitted by Title VI of the Federal Water Quality Act of 1987 and the regulations thereunder."

Section 16. The General Assembly finds that:

- (1) The General Assembly has previously found that it is the policy of this State to facilitate the extension of natural gas facilities to unserved areas of the State; and
- (2) The extension of natural gas facilities to unserved areas of the State is necessary for the health of the people and of the environment; and
- (3) The extension of natural gas facilities to unserved areas of the State will aid and encourage the location of manufacturing enterprises and industrial facilities in those areas of the State, will encourage new construction, homes, and other businesses in those areas of the State, will increase the population, taxable property, agricultural industries, and business prospects in the State; and
- (4) The 1989 General Assembly in Chapter 338 of the 1989 Session Laws directed the North Carolina Utilities Commission to require the franchised natural gas local distribution companies to file reports with the Commission detailing their plans for providing natural gas service in areas of the State where natural gas service is not available, and directed the Commission and the Public Staff to provide independent analyses and summaries of those reports together with status reports of natural gas service in the State to the Joint Legislative Utility Review Committee; and
- (5) The reports of the utilities, the Commission, and the Public Staff indicate that the construction of facilities and the extension of natural gas service in some areas of the State may not be economically feasible with traditional funding methods; and
- (6) The 1991 General Assembly enacted G.S. 62-158 and G.S. 62-2(9) authorizing special funding methods, including the use of supplier refunds and customer surcharges, to facilitate the expansion of natural gas service; and
- (7) While the 1991 legislation has been successful in providing some natural gas service to previously unserved areas of the State, that legislation has not been sufficient to facilitate the extension of service that is necessary and in the public interest, and there are still counties with no gas service or virtually no gas service; and
- (8) It is therefore necessary to authorize additional funding methods, including appropriations from the General Assembly and the proceeds of general obligation bonds, to further facilitate the expansion of natural gas service.

Section 17. Chapter 62 of the General Statutes is amended by adding a new section to read:

"§ 62-159. Additional funding for natural gas expansion."

(a) In order to facilitate the construction of facilities in and the extension of natural gas service to unserved areas, the Commission may provide funding through appropriations from the General Assembly or the proceeds of general obligation bonds as provided in this section to either (i) an existing natural gas local distribution company or (ii) a person or a gas district awarded a new franchise for the construction of natural gas facilities that it otherwise would not be economically feasible for the company, person, or gas district to construct.

(b) The use of funds provided under this section shall be pursuant to an order of the Commission after a public hearing. The Commission shall ensure that all projects for which funds are provided under this section are consistent with the intent of this section and G.S. 62-2(9). In determining whether to approve the use of funds for a particular project pursuant to this section, the Commission shall consider the scope of a proposed project, including the number of unserved counties and the number of anticipated customers that would be served, the total cost of the project, the extent to which the project is considered feasible, and other relevant factors affecting the public interest. In determining economic feasibility, the Commission shall employ the net present value method of analysis on a project specific basis. Only those projects with a negative net present value shall be determined to be economically infeasible for the company, person, or gas district to construct. In no event shall the Commission provide funding under this section of an amount greater than the negative net present value of any proposed project as determined by the Commission. If at any time a project is determined by the Commission to have become economically feasible, the Commission shall require the recipient of funding to remit to the Commission appropriate funds related to the project, and the Commission may order those funds to be returned with interest in a reasonable amount to be determined by the Commission. Funds returned, together with interest, shall be deposited with the State Treasurer to be used for other expansion projects pursuant to the provisions of this section. Utility plant acquired with expansion funds shall be included in the local distribution company's rate base at zero cost except to the extent such funds have been remitted by the company pursuant to order of the Commission. In the event a gas district wishes to sell or otherwise dispose of facilities financed with funds received under this section, it must first notify the Commission which shall determine the method of repayment or accounting for those funds.

(c) To the extent that one or more of the counties included in a proposed project to be funded pursuant to this section are counties affected by the loss of exclusive franchise rights provided for in G.S. 62-36A(b), the Commission may conclude that the public interest requires that the person obtaining the franchise or funding pursuant to this section be given an exclusive franchise and that the existing franchise be canceled. Any new exclusive franchise granted under this subsection shall be subject to the provisions of G.S. 62-36A(b). This subsection does not apply to gas districts formed under Article 28 of Chapter 160A of the General Statutes.

(d) The Commission, after hearing, shall adopt rules to implement this section as soon as practicable. The Commission and Public Staff shall

report to the Joint Legislative Utility Review Committee on the use of funding provided under this section in conjunction with the reports required under G.S. 62-36A."

Section 18. G.S. 62-2 reads as rewritten:

"§ 62-2. *Declaration of policy.*

(a) Upon investigation, it has been determined that the rates, services and operations of public utilities as defined herein, are affected with the public interest and that the availability of an adequate and reliable supply of electric power and natural gas to the people, economy and government of North Carolina is a matter of public policy. It is hereby declared to be the policy of the State of North Carolina:

- (1) To provide fair regulation of public utilities in the interest of the public;
- (2) To promote the inherent advantage of regulated public utilities;
- (3) To promote adequate, reliable and economical utility service to all of the citizens and residents of the State;
- (3a) To assure that resources necessary to meet future growth through the provision of adequate, reliable utility service include use of the entire spectrum of demand-side options, including but not limited to conservation, load management and efficiency programs, as additional sources of energy supply and/or energy demand reductions. To that end, to require energy planning and fixing of rates in a manner to result in the least cost mix of generation and demand-reduction measures which is achievable, including consideration of appropriate rewards to utilities for efficiency and conservation which decrease utility bills;
- (4) To provide just and reasonable rates and charges for public utility services without unjust discrimination, undue preferences or advantages, or unfair or destructive competitive practices and consistent with long-term management and conservation of energy resources by avoiding wasteful, uneconomic and inefficient uses of energy;
- (4a) To assure that facilities necessary to meet future growth can be financed by the utilities operating in this State on terms which are reasonable and fair to both the customers and existing investors of such utilities; and to that end to authorize fixing of rates in such a manner as to result in lower costs of new facilities and lower rates over the operating lives of such new facilities by making provisions in the rate-making process for the investment of public utilities in plants under construction;
- (5) To encourage and promote harmony between public utilities, their users and the environment;
- (6) To foster the continued service of public utilities on a well-planned and coordinated basis that is consistent with the level of energy needed for the protection of public health and safety and for the promotion of the general welfare as expressed in the State energy policy;

- (7) To seek to adjust the rate of growth of regulated energy supply facilities serving the State to the policy requirements of statewide development;
- (8) To cooperate with other states and with the federal government in promoting and coordinating interstate and intrastate public utility service and reliability of public utility energy supply; and
- (9) To facilitate the construction of facilities in and the extension of natural gas service to unserved areas in order to promote the public welfare throughout the State and to that end to authorize the creation of ~~an~~ expansion ~~fund~~ funds for ~~each~~ natural gas local distribution ~~company~~ companies or gas districts to be administered under the supervision of the North Carolina Utilities Commission.

(b) To these ends, therefore, authority shall be vested in the North Carolina Utilities Commission to regulate public utilities generally, their rates, services and operations, and their expansion in relation to long-term energy conservation and management policies and statewide development requirements, and in the manner and in accordance with the policies set forth in this Chapter. Nothing in this Chapter shall be construed to imply any extension of Utilities Commission regulatory jurisdiction over any industry or enterprise that is not subject to the regulatory jurisdiction of said Commission.

Because of technological changes in the equipment and facilities now available and needed to provide telephone and telecommunications services, changes in regulatory policies by the federal government, and changes resulting from the court-ordered divestiture of the American Telephone and Telegraph Company, competitive offerings of certain types of telephone and telecommunications services may be in the public interest. Consequently, authority shall be vested in the North Carolina Utilities Commission to allow competitive offerings of local exchange, exchange access, and long distance services by public utilities defined in G.S. 62-3(23)a.6. and certified in accordance with the provisions of G.S. 62-110, and the Commission is further authorized after notice to affected parties and hearing to deregulate or to exempt from regulation under any or all provisions of this Chapter: (i) a service provided by any public utility as defined in G.S. 62-3(23)a.6. upon a finding that such service is competitive and that such deregulation or exemption from regulation is in the public interest; or (ii) a public utility as defined in G.S. 62-3(23)a.6., or a portion of the business of such public utility, upon a finding that the service or business of such public utility is competitive and that such deregulation or exemption from regulation is in the public interest.

The policy and authority stated in this section shall be applicable to common carriers of passengers by motor vehicle and their regulation by the North Carolina Utilities Commission only to the extent that they are consistent with the provisions of the Bus Regulatory Reform Act of 1985.

The North Carolina Utilities Commission may develop regulatory policies to govern the provision of telecommunications services to the public which promote efficiency, technological innovation, economic growth, and permit telecommunications utilities a reasonable opportunity to compete in an

emerging competitive environment, giving due regard to consumers, stockholders, and maintenance of reasonably affordable local exchange service and long distance service."

Section 19. Effective date. Sections 14 and 15 of this act become effective only if the voters approve the issuance of the Clean Water Bonds authorized by this act in the election required by Section 7 of this act. The remaining sections of this act are effective when the act becomes law, and the Utilities Commission shall begin immediately the rule-making process mandated by G.S. 62-159(d), as enacted by Section 17 of this act.

In the General Assembly read three times and ratified this the 3rd day of September, 1998.

Became law upon approval of the Governor at 10:00 a.m. on the 9th day of September, 1998.

H.B. 1478

SESSION LAW 1998-133

AN ACT TO DIRECT THE DEPARTMENT OF PUBLIC INSTRUCTION TO STUDY AND MAKE RECOMMENDATIONS REGARDING THE REMOVAL OF THE BARRIERS THAT PREVENT LOCAL BOARDS OF EDUCATION FROM PROVIDING YEAR-ROUND SCHOOLS.

The General Assembly of North Carolina enacts:

Section 1. The Department of Public Instruction shall form a task force to identify the barriers that prevent local boards of education from providing year-round schools for all grade levels. In addition, the task force shall identify ways that local boards of education or the State Board of Education could minimize or remove those barriers. The task force shall report the results of its study, including any proposed changes to existing laws, rules or policies, to the State Board of Education and the Joint Legislative Education Oversight Committee prior to May 15, 1999. The task force shall terminate upon reporting its results. The State Board of Education shall disseminate the results of the study to local boards of education no later than June 15, 1999.

Section 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 2nd day of September, 1998.

Became law upon approval of the Governor at 10:20 a.m. on the 11th day of September, 1998.

H.B. 1617

SESSION LAW 1998-134

AN ACT TO EXTEND THE INCOME TAX CREDIT FOR POULTRY COMPOSTING FACILITIES TO CORPORATE ENTITIES AND TO REMOVE THE SUNSET FOR THE INDIVIDUAL INCOME TAX CREDIT.

The General Assembly of North Carolina enacts:

Section 1. Division I of Article 4 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"§ 105-130.44. Credit for construction of poultry composting facility.

A taxpayer who constructs in this State a poultry composting facility, as defined in G.S. 106-549.51 for the composting of whole, unprocessed poultry carcasses from commercial operations in which poultry is raised or produced, is allowed as a credit against the tax imposed by this Division an amount equal to twenty-five percent (25%) of the installation, materials, and equipment costs of construction paid during the taxable year. This credit may not exceed one thousand dollars (\$1,000) for any single installation. The credit allowed by this section may not exceed the amount of tax imposed by this Division for the taxable year reduced by the sum of all credits allowable, except payments of tax by or on behalf of the taxpayer. The credit allowed by this section does not apply to costs paid with funds provided the taxpayer by a State or federal agency."

Section 2. G.S. 105-151.25(a) reads as rewritten:

"(a) Credit. -- A taxpayer ~~or Subchapter S corporation~~ who constructs in this State a poultry composting facility as defined in G. S. 106-549.51 for the composting of whole, unprocessed poultry carcasses from commercial operations in which poultry is raised or produced is allowed as a credit against the tax imposed by this Division an amount equal to twenty-five percent (25%) of the installation, materials, and equipment costs of construction paid during the taxable year. This credit may not exceed one thousand dollars (\$1,000) for any single installation. The credit allowed by this section may not exceed the amount of tax imposed by this Division for the taxable year reduced by the sum of all credits allowable, except payments of tax by or on behalf of the taxpayer. The credit allowed by this section does not apply to costs paid with funds provided the taxpayer by a State or federal agency."

Section 3. Section 4 of Chapter 543 of the 1995 Session Laws reads as rewritten:

"Sec. 4. Section 1 of this act becomes effective for taxable years beginning on or after January 1, ~~1995, and expires for taxable years beginning on or after January 1, 1998.~~ 1995. The remainder of this act is effective upon ratification."

Section 4. Section 1 of this act is effective for taxable years beginning on or after January 1, 1998. The remainder of this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 2nd day of September, 1998.

Became law upon approval of the Governor at 10:22 a.m. on the 11th day of September, 1998.

S.B. 78

SESSION LAW 1998-135

AN ACT AMENDING THE STATE PERSONNEL ACT TO ESTABLISH JURISDICTION FOR THE HEARING OF STATE EMPLOYEE WORKPLACE HARASSMENT GRIEVANCES BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS AND THE STATE PERSONNEL COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 126-4(11) reads as rewritten:

"(11) In cases where the Commission finds ~~discrimination~~ discrimination, harassment, or orders reinstatement or back pay whether (i) heard by the Commission or (ii) appealed for limited review after settlement or (iii) resolved at the agency level, the assessment of reasonable attorneys' fees and witnesses' fees against the State agency involved."

Section 2. G.S. 126-34 reads as rewritten:

"§ 126-34. *Grievance appeal for career State employees.*

Unless otherwise provided in this Chapter, Any any career State employee having a grievance arising out of or due to ~~his~~ the employee's employment and who does not allege unlawful harassment or discrimination because of ~~his~~ the employee's age, sex, race, color, national origin, religion, creed, handicapping condition as defined by G.S. 168A-3, or political affiliation shall first discuss ~~his~~ the problem or grievance with ~~his~~ the employee's supervisor and follow the grievance procedure established by ~~his~~ the employee's department or agency. Any State employee having a grievance arising out of or due to the employee's employment who alleges unlawful harassment because of the employee's age, sex, race, color, national origin, religion, creed, or handicapping condition as defined by G.S. 168A-3 shall submit a written complaint to the employee's department or agency. The department or agency shall have 60 days within which to take appropriate remedial action. If the employee is not satisfied with the department or agency's response to the complaint, the employee shall have the right to appeal directly to the State Personnel Commission."

Section 3. G.S. 126-34.1(a) is amended by adding a new subdivision to read:

"(10) Harassment in the workplace based upon age, sex, race, color, national origin, religion, creed, or handicapping condition, whether the harassment is based upon the creation of a hostile work environment or upon a quid pro quo."

Section 4. G.S. 126-36 reads as rewritten:

"§ 126-36. *Appeal of unlawful State employment practice.*

(a) Any State employee or former State employee who has reason to believe that employment, promotion, training, or transfer was denied ~~him~~ the employee or that demotion, ~~layoff~~ layoff, transfer, or termination of employment was forced upon ~~him~~ the employee in retaliation for opposition to alleged discrimination or because of ~~his~~ the employee's age, sex, race, color, national origin, religion, creed, political affiliation, or ~~handicapped~~ handicapping condition as defined by G.S. 168A-3 except where specific age, sex or physical requirements constitute a bona fide occupational qualification necessary to proper and efficient administration, shall have the right to appeal directly to the State Personnel Commission.

(b) Subject to the requirements of G.S. 126-34, any State employee or former State employee who has reason to believe that the employee has been subjected to any of the following shall have the right to appeal directly to the State Personnel Commission:

- (1) Harassment in the workplace based upon age, sex, race, color, national origin, religion, creed, or handicapping condition, whether the harassment is based upon the creation of a hostile work environment or upon a quid pro quo.
- (2) Retaliation for opposition to harassment in the workplace based upon age, sex, race, color, national origin, religion, creed, or handicapping condition, whether the harassment is based upon the creation of a hostile work environment or upon a quid pro quo."

Section 5. G.S. 126-37(a) reads as rewritten:

"(a) Appeals involving a disciplinary action, alleged ~~discrimination~~, discrimination or harassment, and any other contested case arising under this Chapter shall be conducted in the Office of Administrative Hearings as provided in Article 3 of Chapter 150B; provided that no grievance may be appealed unless the employee has complied with G.S. 126-34. The State Personnel Commission shall make a final decision in these cases as provided in G.S. 150B-36, except as provided in subsection (b1) of this section. The State Personnel Commission is hereby authorized to reinstate any employee to the position from which ~~he~~ the employee has been removed, to order the employment, promotion, transfer, or salary adjustment of any individual to whom it has been wrongfully denied or to direct other suitable action to correct the abuse which may include the requirement of payment for any loss of salary which has resulted from the improperly discriminatory action of the appointing authority."

Section 6. This act becomes effective August 15, 1998, and applies to State employee grievances arising on or after that date and to cases pending on that date in the Office of Administrative Hearings or before the State Personnel Commission or on appeal from a decision of the Commission.

In the General Assembly read three times and ratified this the 2nd day of September, 1998.

Became law upon approval of the Governor at 10:26 a.m. on the 11th day of September, 1998.

S.B. 1171

SESSION LAW 1998-136

AN ACT TO MODIFY BUILDING FOUNDATION SETBACK REQUIREMENTS AND TO ESTABLISH MONITORING REQUIREMENTS FOR WATER SUPPLY WELLS SERVING INSTITUTIONS AND FACILITIES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 130A-235 reads as rewritten:

"§ 130A-235. Regulation of sanitation in ~~institutions~~. institutions; setback requirements applicable to certain water supply wells.

(a) For protection of the public health, the Commission shall adopt rules to establish sanitation requirements for all institutions and facilities at which individuals are provided room or board and for which a license to operate is required to be obtained or a certificate for payment is obtained from the Department. The rules shall also apply to facilities that provide room and

board to individuals but are exempt from licensure under G.S. 131D-10.4(1). No other State agency may adopt rules to establish sanitation requirements for these institutions and facilities. The Department shall issue a license to operate or a certificate for payment to such an institution or facility only upon compliance with all applicable sanitation rules of the Commission, and the Department may suspend or revoke a license or a certificate for payment for violation of these rules. In adopting rules pursuant to this section, the Commission shall define categories of standards to which such institutions and facilities shall be subject and shall establish criteria for the placement of any such institution or facility into one of the categories. This section shall not apply to State institutions and facilities subject to inspection under G.S. 130A-5(10).

(b) Rules that establish a minimum distance from a building foundation for a water supply well shall provide that an institution or facility located in a single-family dwelling served by a water supply well that is located closer to a building foundation than the minimum distance specified in the rules may be licensed or approved if the results of water testing meet or exceed standards established by the Commission and there are no other potential health hazards associated with the well. At the time of application for licensure or approval, water shall be sampled and tested for pesticides, nitrates, and bacteria. Thereafter, water shall be sampled and tested at intervals determined by the Commission but not less than annually. A registered sanitarian or other health official who is qualified by training and experience shall collect the water samples as required by this subsection and may examine the well location to determine if there are other potential health hazards associated with the well. A well shall comply with all other applicable sanitation requirements established by the Commission.

(c) The Department may suspend or revoke a license or approval for a violation of this section or rules adopted by the Commission."

Section 2. The Commission for Health Services may adopt temporary rules necessary to implement Section 1 of this act within 90 days of the effective date of this act.

Section 3. No later than 1 January 1999, the Commission for Health Services shall adopt a temporary rule in accordance with G.S. 150B-21.1 that provides specific guidelines for waiving the existing water supply well setback requirements contained in 15A NCAC 18A.1720 for institutions and facilities located in single-family dwellings. In adopting this rule, the Commission shall determine specific criteria under which 15A NCAC 18A.1720 may be waived while still protecting the public health.

Section 4. The Commission for Health Services shall report to the Joint Legislative Administrative Procedure Oversight Committee on the implementation of this act no later than 1 October 1998.

Section 5. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 2nd day of September, 1998.

Became law upon approval of the Governor at 10:26 a.m. on the 11th day of September, 1998.

H.B. 1327

SESSION LAW 1998-137

AN ACT TO IMPLEMENT THE RECOMMENDATION OF THE JOINT LEGISLATIVE EDUCATION OVERSIGHT COMMITTEE TO ALLOW LOCAL SCHOOL ADMINISTRATIVE UNITS TO USE SINGLE-PRIME BIDDING, MULTI-PRIME BIDDING, OR BOTH, FOR CONSTRUCTION PROJECTS OVER FIVE HUNDRED THOUSAND DOLLARS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143-128 is amended by adding a new subsection to read:

"(d1) Local school administrative units; building projects over five hundred thousand dollars (\$500,000). -- When the entire cost of the building project is more than five hundred thousand dollars (\$500,000), a local school administrative unit shall seek bids as provided in subsection (b) or (d) of this section or this subsection. The local school administrative unit shall award the contract to the lowest responsible bidder under the single-prime system or to the lowest responsible bidder under the separate-prime system, taking into consideration quality, performance, and time specified in the bids for performance of the contract. In determining the system under which the contract will be awarded to the lowest responsible bidder, the local school administrative unit may consider cost of construction oversight, time for completion, and other factors it deems appropriate. The local school administrative unit shall not open any bid solicited under subsection (d) of this section unless the unit receives at least three competitive bids from reputable and qualified contractors regularly engaged in their respective lines of endeavor and unless the unit receives a bid from at least one general contractor under the separate-prime system. The bids received as separate-prime bids shall be submitted three hours prior to the deadline for the submission of single-prime bids. The amount of a bid submitted by a subcontractor to the general contractor under the single-prime system shall not exceed the amount bid, if any, for the same work by that subcontractor to the local school administrative unit under the separate-prime system. Each single-prime bid that identifies the contractors selected to perform the three major subdivisions or branches of work described in subsection (d) of this section and that lists the contractors' respective bid prices for those branches of work shall constitute a single competitive bid, and each full set of separate-prime bids for all of the branches of work described in subsection (d) of this section shall constitute a single competitive bid. If after advertisement as required by G.S. 143-129, the local school administrative unit has not received the minimum number of competitive bids as required by this subsection, the unit shall again advertise for bids. If the required minimum number of bids is not received as a result of the second advertisement, the unit may let the contract to the lowest responsible bidder that submitted a bid for the project, even though the unit received only one bid. A contractor must provide an affidavit to the local school administrative unit that it has made the good faith effort required pursuant to G.S. 143-128(f), and failure to file the affidavit is grounds for

rejection of the bid. All provisions of Article 8 of Chapter 143 of the General Statutes that are not inconsistent with this subsection shall apply to local school administrative units."

Section 2. This act is effective when it becomes law and applies to bids solicited on or after that date.

In the General Assembly read three times and ratified this the 2nd day of September, 1998.

Became law upon approval of the Governor at 10:30 a.m. on the 11th day of September, 1998.

S.B. 1373

SESSION LAW 1998-138

AN ACT TO DISAPPROVE AN ADMINISTRATIVE RULE ADOPTED BY THE ENVIRONMENTAL MANAGEMENT COMMISSION REGARDING THE TAR-PAMLICO RIVER BASIN.

The General Assembly of North Carolina enacts:

Section 1. Pursuant to G.S. 150B-21.3(b), the amendments to 15A NCAC 2B.0316, (Tar-Pamlico River Basin), as adopted by the Environmental Management Commission and approved by the Rules Review Commission on 15 January 1998, are disapproved. The Environmental Management Commission may adopt, pursuant to G.S. 150B-21.1 and consistent with G.S. 143-214.1, 143-215.1, and 143-215.3(a)(1), a temporary rule that incorporates the amendments to 15A NCAC 2B.0316 that are disapproved by this act, except that the primary classification of the portion of the Tar River designated as Index Number 28-(74) may not be reclassified from WS-IV to WS-V by a temporary rule pursuant to this act.

Section 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 3rd day of September, 1998.

Became law upon approval of the Governor at 1:55 p.m. on the 14th day of September, 1998.

H.B. 1489

SESSION LAW 1998-139

AN ACT TO IMPROVE COLLECTION OF LOCAL TAXES BY ALLOWING CERTAIN GOVERNMENT OFFICIALS TO SHARE SPECIFIED TAX INFORMATION AND BY ALLOWING A TAXPAYER TO RECEIVE A RELEASE OR REFUND OF PRORATED VEHICLE PROPERTY TAXES IF THE TAXPAYER MOVES OUT-OF-STATE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-259(b) is amended by adding two new subdivisions to read:

"(5c) To provide the following information to a regional public transportation authority or a regional transportation authority created pursuant to Article 26 or Article 27 of Chapter 160A of

the General Statutes on an annual basis, when the information is needed to enable the authority to administer its tax laws:

- a. The name, address, and identification number of retailers who collect the tax on leased vehicles imposed by G.S. 105-187.5.
- b. The name, address, and identification number of a retailer audited by the Department of Revenue regarding the tax on leased vehicles imposed by G.S. 105-187.5, when the Department determines that the audit results may be of interest to the authority.

(5d) To provide the following information to a county or city on an annual basis, when the county or city needs the information for the administration of its local tax on prepared food and beverages:

- a. The name, address, and identification number of retailers who collect the sales and use taxes imposed under Article 5 of this Chapter and may be engaged in the business of selling prepared food and beverages.
- b. The name, address, and identification number of a retailer audited by the Department of Revenue regarding the sales and use taxes imposed under Article 5 of this Chapter, when the Department determines that the audit results may be of interest to the county or city in the administration of its local tax on prepared food and beverages."

Section 2. G.S. 153A-148.1(a) is amended by adding two new subdivisions to read:

- "(4) To exchange information with a regional public transportation authority or a regional transportation authority created pursuant to Article 26 or Article 27 of Chapter 160A of the General Statutes, when the information is needed to fulfill a duty imposed on the authority or on the county.
- (5) To exchange information with the Department of Revenue, when the information is needed to fulfill a duty imposed on the Department or on the county."

Section 3. G.S. 105-330.6(c) reads as rewritten:

"(c) If the owner of a classified motor vehicle listed pursuant to G.S. 105-330.3(a)(1) either transfers the motor vehicle to a new owner or moves out-of-state and registers the vehicle in another jurisdiction, and the owner surrenders the registration plates from the listed vehicle to the Division of Motor Vehicles and at the date of surrender one or more full calendar months remains in the listed vehicle's tax year, Vehicles, then the owner may apply for a release or refund of taxes on the vehicle for the any full calendar months remaining after surrender, in the vehicle's tax year after the date of surrender. To apply for a release or refund, the owner must present to the county tax collector within 120 days after surrendering the plates the receipt received from the Division of Motor Vehicles accepting surrender of the registration plates. The county tax collector shall then multiply the amount of the taxes for the tax year on the vehicle by a fraction, the denominator of which is 12 and the numerator of which is the

number of full calendar months remaining in the vehicle's tax year after the date of surrender of the registration plates. The product of the multiplication is the amount of taxes to be released or refunded. If the taxes have not been paid at the date of application, the county tax collector shall make a release of the prorated taxes and credit the owner's tax notice with the amount of the release. If the taxes have been paid at the date of application, the county tax collector shall direct an order for a refund of the prorated taxes to the county finance officer, and the finance officer shall issue a refund to the vehicle owner."

Section 4. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 3rd day of September, 1998.

Became law upon approval of the Governor at 1:58 p.m. on the 14th day of September, 1998.

H.B. 1502

SESSION LAW 1998-140

AN ACT TO AUTHORIZE THE CONSTRUCTION AND THE FINANCING OF CERTAIN CAPITAL IMPROVEMENTS PROJECTS OF THE CONSTITUENT INSTITUTIONS OF THE UNIVERSITY OF NORTH CAROLINA.

The General Assembly of North Carolina enacts:

Section 1. The purpose of this act is (i) to authorize the construction by certain constituent institutions of The University of North Carolina and the University of North Carolina General Administration, of the capital improvements projects listed in the act for the respective institutions, and (ii) to authorize the financing of these projects with funds available to the institutions from gifts, grants, receipts, self-liquidating indebtedness, or other funds, or any combination of these funds, but not including funds appropriated from the General Fund.

Section 2. The capital improvements projects, and their respective costs, authorized by this act to be constructed and financed as provided in Section 1 of this act, are as follows:

- | | |
|---|-------------|
| 1. Appalachian State University | |
| Renovation of Welborn Cafeteria | \$6,159,700 |
| 2. East Carolina University | |
| West End Dining Hall | 7,410,300 |
| 3. North Carolina A & T State University | |
| Residence Hall Improvements | 5,000,100 |
| 4. North Carolina State University | |
| Centennial Campus Buildings, Improvements for Tenants Use | 2,862,600 |
| 5. The University of North Carolina at Chapel Hill | |
| Medical Biomolecular Research Building, | |

Phase II	30,045,500
Renovations and Addition to the Frank Porter Graham Student Union	13,287,300
Addition to Beard Hall	8,414,200
Institute of Government Parking Deck	1,548,500
6. The University of North Carolina at Charlotte Addition to the Barnhardt Student Activity Center	5,772,800
7. The University of North Carolina at Wilmington Improvements to Athletic Facilities	4,481,600
8. Western Carolina University Work Force Development Center	7,499,800.

Section 3. At the request of the Board of Governors of The University of North Carolina and upon determining that it is in the best interest of the State to do so, the Director of the Budget may authorize an increase or decrease in the cost of, or a change in the method of funding the projects authorized by this act. In determining whether to authorize a change in cost or funding, the Director of the Budget may consult with the Joint Legislative Commission on Governmental Operations.

Section 4. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 3rd day of September, 1998.

Became law upon approval of the Governor at 2:00 p.m. on the 14th day of September, 1998.

S.B. 1398

SESSION LAW 1998-141

AN ACT TO AMEND CHAPTER 168 OF THE 1939 PUBLIC-LOCAL LAWS, AS PREVIOUSLY AMENDED, WHICH ENABLED THE ESTABLISHMENT OF THE RALEIGH-DURHAM AIRPORT AUTHORITY, TO ALLOW THE AUTHORITY TO CONTRACT WITH PRIVATE PARTIES FOR THE DEVELOPMENT, CONSTRUCTION, AND OCCUPANCY OF SPECIAL USER PROJECTS WITHOUT COMPLYING WITH ARTICLE 8 OF CHAPTER 143 OF THE GENERAL STATUTES.

The General Assembly of North Carolina enacts:

Section 1. Subsection (f) of Section 7 of Chapter 168 of the Public-Local Laws of 1939, as amended by Chapter 1096 of the 1955 Session Laws, and Chapter 755 of the Session Laws of 1959, is further amended by adding a new subdivision to read:

"(1) Special User Projects. To contract with persons, firms, or corporations for special user projects as defined and described in this subdivision.

Special user projects are projects that are undertaken for the use and benefit of one or more private entities who will lease the facilities from the Authority upon terms and conditions that will make the private entities solely responsible for the repayment of all notes, bonds, debts, or other costs incurred in the financing, acquisition, development, or construction of the project.

A special user project shall include all of the following:

- a. The acquisition of equipment, the development of land belonging to the Authority, the construction of buildings or other structures belonging to the Authority on land belonging to the Authority.
- b. The issuance of the Authority's special facility revenue bonds or other debt instruments, as authorized in Article 5 of Chapter 159 of the General Statutes, in an amount not less than four million dollars (\$4,000,000) by the Local Government Commission, the proceeds of which shall be used to pay the costs of the special user project and which bonds or other debt instruments shall be repayable solely from the rents, fees, charges, payments, or other revenues payable to the Authority by the special user or from the funds, collateral, and undertakings of private parties that are either assigned or pledged by those parties.
- c. The use of the property acquired, developed, or constructed shall be limited to airline, aircraft, aviation support, air passenger, aircraft maintenance and repair, other airport related purposes, but may include appurtenances and incidental facilities such as driveways, sidewalks, parking facilities, utilities, warehouses, loading facilities, administrative and other office facilities, and other improvements necessary or convenient for the operation of these facilities.

Notwithstanding any other provision of law, the Authority may agree that all contracts relating to the acquisition, design, construction, installation, or equipping of the special user project shall be solicited, negotiated, awarded, and executed by the private parties for which the Authority is financing the special user project or any agents of the private parties subject only to approval by the Authority, as the Authority may require. The Authority may, out of the proceeds of bonds or other debt instruments, make advances to or reimburse the private parties or their agents for all or a portion of the costs incurred in connection with the contracts. For all contracts related to special user projects, the Authority shall be exempt from the requirements of Article 8 of Chapter 143 of the General Statutes."

Section 2. This act is effective when it becomes law and expires on January 1, 2003. All contracts executed under the authority of this act and any bonds or other debt instruments issued pursuant to this act prior to the

expiration date of this act shall remain effective until the contracts are completed or the bonds or other debt instruments are retired.

In the General Assembly read three times and ratified this the 14th day of September, 1998.

Became law on the date it was ratified.

S.B. 1509

SESSION LAW 1998-142

AN ACT TO ALLOW THE CITY OF DURHAM TO DISCLOSE LIMITED PERSONNEL INFORMATION TO THE MEMBERS OF THE CITIZEN REVIEW BOARD TO FACILITATE ITS REVIEW OF POLICE DISCIPLINARY CASES.

The General Assembly of North Carolina enacts:

Section 1. Section 120 of the Charter of the City of Durham, being Chapter 671 of the 1975 Session Laws, as amended by Chapter 1249 of the 1979 Session Laws, reads as rewritten:

"Sec. 120. (a) Personnel Records. -- Notwithstanding any provision of G.S. 160A-168, the city manager may, with the approval of the city council, inform any person or corporation of any promotion, demotion, suspension, reinstatement, transfer, separation, dismissal, employment or nonemployment of any applicant, employee or former employee employed by or assigned to the city or whose personnel file is maintained by the city and the reasons therefor and may allow the personnel file of such person or any portion thereof to be inspected and examined by any person or corporation when the city manager shall determine that the release of such information or the inspection and examination of such file or portion thereof is essential to maintaining the integrity of the city or to maintaining the level or quality of services provided by the city; provided that prior to releasing such information or making such file or portion thereof available as provided herein, the city manager shall prepare a memorandum setting forth the circumstances which he deems to require such disclosure and the information to be disclosed. The memorandum shall be retained in the files of the city and shall be a public record.

(b) Notwithstanding G.S. 160A-168, the city manager or the city manager's designee may, to facilitate citizen review of the police disciplinary process, release the disposition of disciplinary charges against a police officer and the facts relied upon in determining the disposition to (i) members of the citizen review board and (ii) the person alleged to have been aggrieved by the police officer's action or the person's survivor. The disposition of disciplinary charges includes a determination that the charges were sustained, not sustained, unfounded, exonerated, or the result of a policy failure. If the citizen review board hears an appeal of a police disciplinary case, the disposition of disciplinary charges as well as the facts and circumstances of the case may be released by the city manager or the city manager's designee to the citizen review board or to the staff to the board. Citizen review board members and other persons shall keep confidential all information released to them under this subsection that is not a matter of public record under G.S. 160A-168 or subsection (a) of this

section, and any person who violates the confidentiality shall be prosecuted as prescribed in G.S. 160A-168(e) and (f)."

Section 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 15th day of September, 1998.

Became law on the date it was ratified.

S.B. 1514

SESSION LAW 1998-143

AN ACT TO INCORPORATE THE TOWN OF HEMBY BRIDGE, AND CONCERNING ANNEXATION IN HARNETT COUNTY.

The General Assembly of North Carolina enacts:

Section 1. A Charter for the Town of Hemby Bridge is enacted as follows:

"CHARTER OF TOWN OF HEMBY BRIDGE.

"CHAPTER I.

"INCORPORATION AND CORPORATE POWERS.

"Section 1.1. Incorporation and Corporate Powers. The inhabitants of the Town of Hemby Bridge, which area is described in Section 2.1 of this Charter, are a body corporate and politic under the name 'Town of Hemby Bridge.' Under that name they have all the powers, duties, rights, privileges, and immunities conferred and imposed on cities by the general law of North Carolina.

"CHAPTER II.

"CORPORATE BOUNDARIES.

"Sec. 2.1. Town Boundaries. Until modified in accordance with the law, the boundaries of the Town of Hemby Bridge are as follows:

Beginning at the Center of Stevens Mill Road (1524) and the South fork of Crooked Creek and running E. using the center of Crooked Creek as outside boundary of Proposed Town of Hemby Bridge including property of Larry Love and running 1,051' East down Crooked Creek to property of Manuel Hicks, continuing on 620' down center of Crooked Creek. Creek bends 55 degrees N and runs 858' connecting with and including property of James and Vera McBride then 90 degrees W. and 295' then 90 degrees S. and continuing down center of Creek 2,640' continuing floodplain that connects with Lot 78 at end of Woody Grove Rd. belonging to Sharon McInnis and SE 315' which is Lot 79 belonging to Nelson and Doris Howlett, containing all homes on Woody Grove Rd., and all homes on Hillcrest Circle. Crooked Creek continues and connects with Lot 50 on Hillcrest Circle belonging to Earl McCoy and continuing S. 165' to property of Doris Button which is Lot 49, continuing S. 165' to Lot 48 belonging to Archie and Rachel Townsend, then to Lot 47 belonging to Jacqueline Oliver and 165' to Lot 46 belonging to Brian and Sara Cook, continuing and including Lot 45 belonging to Enrico Gallinaro, then 165' and including Lot 44 belonging to Holt McAdams, then 165' and including Lot 43, Richard Hicks then 165' to Lot 42, Joseph Young. Continuing S. down Crooked Creek including property of Theodore and Demetra Karres continuing on

83' and including property of Lemuel Cannon to S. 83' to include property of Dolly McKee, then 83' to include property of Dolly McKee, then 83' to include property of J.C. McClain, then 248' including property of Carolina Water Service then 453' to include property of Southern Fabric Exchange, then 83' to property of Sonny and Judy Richardson, then turning out of Creek 90 degrees South and 126' to Center of Indian Trail Fairview Road and connecting to and including property of W.R. McQuay then 90 degrees W. to nail in center of Rd (1520) connecting with and including property of Curtis and Libby Williams then 85' to include property of Charles Conner then 83' W. to include property of Jimmy Stroupe then 83' to include property of Elaine Wooten then 83' to include property of Garnet and Clifton Jones then 83' to include property of Jesse Carson, then 83' to include property of James and Mildred Rowell then 83' to include property of Bob Carpenter. Then 42' crossing and including right-of-way drive belonging to George and Colleen Sherin and 165' to include property of Donald Deese then 83' to include property of Terry King. Continuing W. on Indian Trail Fairview (1520) to include property of Christine Horne then 248' to include property of Ethel Brooks then 165' to include property of N.C. Telephone Co., then 372' to include property of Billy Stegall then 381' to include property of Ruby Williams then 151' to include property of Ethel Brooks then 572' to include property of Jody Stegall continuing W. 165' to include property of Billy and Barbara Thompson then 148' to include property of Don and Catherine Baucom, then 147' to include property of Harrison Spencer then 295' to include property of Charles and Shirley Honey, then 413' to include property of Harold Sherrin then 250' to include property of Robert and Connie Gillespie then 173' to include property of James Robinson continuing 150' to include property of Carol and Billie Cunningham then crossing 3rd Avenue (1566) and continuing W. 248' to include property of Marilyn R. Layman then crossing 2nd Avenue and continuing W. 248' to center of 1st Avenue then 90 degrees S. and 165' to include property of Lee and Carolyn Mayberry, then 90 degrees and 248' crossing back over 2nd Avenue then 269' to center of 3rd Avenue to a nail in center of Rd. and include property of James Taylor then 82' to include property of William Threadgill. Third Avenue intersects with Carole Ave. in an Easterly direction and continues 185' to include property of Wilson Johnson continuing center of Carole Ave. (1587) past Reid Rd. (1557) 248' to a nail in center of Rd. to include property of Dennis Hawkins continuing on to include property of Doug McLain continuing on to include property of Leroy Shillmore also marked by nail in center of Rd. continuing center of Carole Ave. 412' to include property of Ray Stegall next nail will mark and include property of David Swanner, then 90 degrees E. to back of property belonging to Nathlee Strickland continuing 92' to wooden stake to include property of Elizabeth Harris, then 92' to metal post to include property of Mae Conder, continuing E. to metal stake to include David Howell's property, then 100' to metal stake to include Jeff and Wanda McSheehan's property next metal stake will mark and include property of Carl Cassados continuing E. to include property of Michele Klass 200' to next stake to include property of Daniel and Gloria Smith 100' to metal stake to include property of Alfred Helms at their metal stakes 120 degrees

SW and 884' to metal fence post then 80 degrees E. and 445' to metal pipe then 40 degrees S. and 142' to metal pipe to include property of Bruce and Linda Simpson continuing SE 1,167' to include property of Norma Simpson continuing E. 536' to metal rod to include property of Charles and Janice Byrum, at metal rod 90 degrees NE and 712' to include property of Scott and Wendy McGuirt then 30 degrees E and 165' to metal pipe then 90 degrees S and 594' to include property of Joe and Kathryn Byrum continuing on and crossing Faith Church Rd. (1518) to connect with metal stake at corner of Dennis and Kathy Helms' property then 80 degrees NE and 701' to metal rod to include property of Helen Snyder continuing NE 247' to the center of Secrest Short Cut Rd. (1501) then 90 degrees N and 245' to center of Faith Church Rd. (1518) then 90 degrees E in center of Rd. to include property of Charles and Janice Byrum from nail in center of Faith Church Rd. 659' to include property of Ervin Barr then 660' to include property of Harold Pressley then 178' to include property of Frank Owens continuing 299' down Faith Church Rd. to include property of Dale Pressley then 344' to include Carl Helms' property at this spike in Rd. Rd bends N. and 165' to include property of Philip Simpson, then continues on 580' to include Ralph Boullet property, then 165' to include Sandra Long's property then 1,359' to include Stan and Patricia Pressley's property. Road bends West and continues 102' to include Lawrence Martin property then 82' to include Donald Brize property, continuing NW on Faith Church Rd. to include Marlen Moore's property then 90 degrees N and 300' to include Dennis Price's property continue 206' to include Floyd Price property then 136' to include Paul McLain property, then 150' to include Paul and Linda Voglewed property, then 140' to Robert and Joan Thompson's property then 536' to center of Indian Trail Fairview Rd. and which includes Charles Burgess property, then 90 degrees W in center of Indian Trail Fairview Rd. and 194' to nail in center of Rd. then 200' to include property of Thomas and Martha Dushak, then from nail 300' to include property of James and Myrtle Benton continuing W. 167' to nail in center of Rd. 90 degrees N. and 233' to include property of Charles Funderburk at 233' marker connects with and includes property of Lawrence Funderburk continuing 1,016 to center of Crooked Creek and connecting to property of Steve Dunn and East up center of Creek 123' to include property of Betty Knece then E. in center of Creek 1,064' to include property of Edwin Dury then 825' E. in center of Creek then out of Creek bank and 973' to flint rock to include property of William Humble then 300' to metal stake to include Delano Trull property then E. 102' to Stanley Edwards' property and at metal pipe continuing NE 300' and connecting to Typar property, then 1,564' to iron rod at Maurice Rowell's property and 650' E to include property of Sam Edwards then at metal pipe 436' to include Tommy Edwards' property, then 299' to include Jamie Haney's property at this point 20 degrees SE and 185' to metal pipe and 1,155' E to include property of Ted Edwards and at metal rod NE 75 degrees and 2,640' to include Tract No. 7015002 of Linda Blackmore's property, which is center of Goose Creek using center of Creek as boundary and N. 577' to include property of Danny Myers, Creek travels 306' N. then turns and 165' E. then 204' NE then 112' to center of Mill Grove Rd. (1525). Boundary turns E. on Mill Grove Rd. and connects with

property of Kenneth Dorton continuing E. on Mill Grove Rd. to include property of William Lemond then 165' E. to include property of Bertie Lemond then 330' to center of Lawyers Rd. (1004) then 400' to include property of William Lemond again then from nail in center of Rd. 668' to include property of Danny Myers Tract No. 2, then 82' to include property of Debrah Dorton then N. 165' to include property of Kenneth Dorton then 160' N. to include property of Dennis Dorton then 120 degrees W. and 295' to large metal rod then NW 367' to metal rod then W. 165' then S. 255' to metal axle at back of Danny Myers' property than at metal axle 195' to metal rod at back of William Lemond's property then 247' to center of Goose Creek enclosing third Tract of Kenneth Dorton's property, continuing S. 739' down Goose Creek to center of Mill Grove Rd., then using center of Mill Grove Rd. (1525) as boundary continuing W. 1,980' down front of Linda Blackmore property to nail in center of Rd., including property of Luther Wetherington property, then 165' to include Greg and Kim Mullis' property, then 990' to include property of King Heirs, then 330' to include property of Steve Turner, then 123' to include James Crump's property, then 295' to include Larry King's property, then 315' to include Helen Gibson's property then 136' to include Jerry Cooper's land still using center of Mill Grove as boundary 110' then 82' to include property of Kenneth and Wanda Rayley, then 82' to include property of Sue Gordon then 82' to include Clayton Barnes' property then 82' to include James Harris' property, then 82' to include property of Leon and Shelby Dial, then 82' to include property of Robert Bemis, then 82' to include property of Edward Kanis, then 82' to include property of Gary and Sandra Antigo, then 82' to include property of James Dickerson, then 82' to include Garland Thomas property, then 82' to include James Baker property, then 82' to include property of Murry Family Partnership, then 82' to include property of Albert Mattock, then 82' to include property of Hal Oswalt, then 82' to include property of William Reinke, then 82' to include property of Lyndel McIver. Then crossing Beacons Hills Rd. to iron pipe at back corner of Randall Johnson property also included, then continuing on S. 102' to include property of Edward Hartis, then 102' to include Leonard Benfield, then 102' to include property of Ray and Mary O'Shields, then 102' to include property of Herbert Himes, then 102' to include property of Irene Leake, then 102' to include property of Enoch Glory, then 102' to include James Helrigle property, then 102' to include property of D.P. and Arlene Somotherman, continuing on 102' to include property of Sharon Hendrickson, then 102' to include property of Danny Myers, then continuing on 30' to center of Hemby Wood Dr. then 90 degrees S. to center of Mill Grove Rd. (1525) then 90 degrees E. and 742' to center of Idlewild Rd. (1582) then 90 degrees N. on Idlewild Rd. and 1,320 to nail in center of Rd. then 90 degrees E. and 225' to wooden stake at back corner of Darren Linsey property to include his property and continue on NW 90' to include property of Steven Revette, then 80' to include property of Virginia Matthews, then 80' to include property of Wayne and Cindy Gordon, then 80' to include property of Donald Moyers, then 80' to include property of Mary Jones, then 80' to include property of Mark Rowell, then 80' to include property of Loreta Fowler, 80' to include David and Rita Hinson

property, 80' to include property of Ernestene Aliff, 80' to include Ken Bailey property, at corner of Kent Bailey property 90 degrees W. and 20' to corner of Linda Compton's property also included then 90 degrees N. and continuing on to cross Bridle Trail Rd. and connecting to and including property of Aron McPhatter, then 80' to include Richard Hodge's property, then 80' to include property of Roger McCover, then 80' to include property of Danny and Sandra Hyatt, then 80' to include property of Glenn Lowery, then 80' to include property of Marvin Naylor, then 80' to include property of Elizabeth Price, then 80' to include property of Ray Gormon, then 80' to include property of Betty Johnson, then 80' to include property of Wanda Rogers, then 80' to include property of Clayton Liles, then 90 degrees W. and 80' to corner of Mark McCall property, then 90 degrees N. and crossing Rockwell Dr. to include property of Emma Metheney, then 80' to include property of Jimmy and Wendy Brown, then NW 165' to center of Idlewild Rd., then 90 degrees down center of Idlewild Rd. (1582) to nail in center of Rd, then 90 degrees E. and connect with and include property of J.R. and Kim Price, then continuing on E. 335' to connect and include property of Philip and Carol Pressley, then 737' to connect and include property of Mr. Swindler at large metal rod NW 1112 to connect and include property of Gene and Lois Belk, continuing on 665' down Belk property line to connect with, but not include, Woodrow-Crump Estate, then 90 degrees NW and 825' to connect and include property of Douglas Dixon, then 210' N. to connect and include property of J.C. McClain, then 165' to connect and include property of James and Frances Crump. Then 409' N. to center of Stevens Mill Rd. (1524) to include Emmanuel Baptist Church, then 90 degrees W. down center of Stevens Mill Rd. crossing Idlewild Rd. (1582) 247' to include property of J. Springstead, continuing on NW on Stevens Mill Rd. 270' to include property of David and Fran McClain, then 440' to include property of J.C. McClain, then 335' to include property of Carol Brands, then 879' to center of South Fork of Crooked Creek and Stevens Mill Rd. which is back of property of Larry Love. Notwithstanding the above description, whenever any boundary is described as the centerline of any road, then the corporate limits of the town extend to the far right-of-way of the road unless the remainder of the right-of-way is included within the corporate limits of another town on the date this Charter becomes effective.

"CHAPTER III.

"GOVERNING BODY.

"Sec. 3.1. **Structure of Governing Body; Number of Members.** The governing body of the Town of Hemby Bridge is the Board of Aldermen, which has five members.

"Sec. 3.2. **Temporary Officers.** Until the organizational meeting after the initial election in 1999 provided for by Section 4.1 of this Charter, Bill Baucom, J.C. McClain, and Phil Pressley are appointed members of the Board of Aldermen, and they shall possess and may exercise the powers granted to the Board of Aldermen until their successors are elected or appointed and qualify pursuant to this Charter. The Board of Aldermen shall have three members until the organizational meeting after the 1999 municipal election.

"Sec. 3.3. Manner of Electing Board of Aldermen; Term of Office. The qualified voters of the entire Town shall elect the members of the Board of Aldermen. In 1999, five members of the Board of Aldermen are elected. The three persons receiving the highest numbers of votes are elected to four-year terms, and the two persons receiving the next highest numbers of votes are elected to two-year terms. In 2001 and quadrennially thereafter, two persons are elected to four-year terms. In 2003 and quadrennially thereafter, three persons are elected to four-year terms.

"Sec. 3.4. Manner of Electing Mayor; Term of Office. At its organizational meeting after each election, the Board of Aldermen shall elect one of its members as Mayor to serve at the pleasure of the Board of Aldermen.

"CHAPTER IV.

"ELECTIONS.

"Sec. 4.1. Conduct of Town Elections. Town officers shall be elected on a nonpartisan election and runoff basis and results determined as provided in G.S. 163-293.

"CHAPTER V.

"ADMINISTRATION.

"Sec. 5.1. Town to Operate Under Mayor-Council Plan. The Town of Hemby Bridge operates under the Mayor-Council plan as provided in Part 3 of Article 7 of Chapter 160A of the General Statutes."

Section 2. This act does not affect the boundaries or taxing power of any fire tax district. Notwithstanding G.S. 69-25.15 or any other provision of law, any area which may be annexed by the Town of Hemby Bridge shall remain in the fire tax district.

Section 3. From and after the effective date of this act, the citizens and property in the Town of Hemby Bridge shall be subject to municipal taxes levied for the year beginning July 1, 1998, and for that purpose the Town shall obtain from Union County a record of property in the area herein incorporated which was listed for taxes as of January 1, 1998. The Town may adopt a budget ordinance for fiscal year 1998-99 without following the timetable in the Local Government Budget and Fiscal Control Act, but shall follow the sequence of actions in the spirit of the act insofar as is practical. For fiscal year 1998-99, ad valorem taxes may be paid at par or face amount within 90 days of adoption of the budget ordinance, and thereafter in accordance with the schedule in G.S. 105-360 as if the taxes had been due and payable on September 1, 1998.

Section 3.1. Any annexation ordinance applicable to any territory described in Section 2.1 of the Charter of the Town of Hemby Bridge is suspended as to its applicability as to any of that territory from the date this act becomes law until the results of the election conducted under Section 2 of this act are certified, and any statutes of limitation as to such ordinance are tolled during that period. If a majority of the votes are cast "For Incorporation of the Town of Hemby Bridge", then any such ordinance shall not be effective as to any territory incorporated into the Town of Hemby Bridge by this act, but if such ordinance also applies to any territory not within the corporate limits of the Town of Hemby Bridge, it is validated as to such other territory. In addition, no annexation ordinance may be

adopted as to any territory described in Section 2.1 of the Charter of the Town of Hemby Bridge from the date this act becomes law until the results of the election conducted under Section 2 of this act are certified, and any time limits for action as to such ordinance are tolled during that period.

Section 3.2. On the date of the general election in 1998, the Union County Board of Elections shall conduct a special election for the purpose of submission to the qualified voters of the area described in Section 2.1 of the Charter of the Town of Hemby Bridge, the question of whether such area shall be incorporated as the Town of Hemby Bridge.

Section 3.3. In the election, the question on the ballot shall be:

"[]FOR []AGAINST

Incorporation of the Town of Hemby Bridge".

Section 3.4. In the election, if a majority of the votes are cast "For the Revival of the Charter of the Town of Hemby Bridge", Sections 1 through 3 of this act become effective on the date that the Union County Board of Elections certifies the results of the election. Otherwise, Sections 1 through 3 of this act have no force and effect.

Section 4. No municipality may annex any of the following described territory in Harnett County pursuant to Part 2 or 3 of Article 4A of Chapter 160A of the General Statutes unless the entire area is annexed:

BEGINNING at the southeastern corner of the intersection of NC Hwy. 421 and SR 2075 (Club Rd.) and running in an easterly direction along the southern margin of NC Hwy. 421 to the southeastern corner of the intersection of NC Hwy. 421 and SR 1542 (Johnson Farm Rd.); thence in a northerly direction running along the eastern margin of SR 1542 to the southeastern corner of the intersection of the property of Campbell University and SR 1542; thence in a northeasterly direction to the southwestern corner of the Campbell University athletic practice fields; thence in a northeasterly direction running along the western boundary of the said practice fields to the northwestern corner of said practice fields; thence in a southeasterly direction running along the northern boundary of said practice fields to the northeastern corner of said practice fields; thence in a westerly direction running along the eastern boundary of said practice fields to the northwest corner of the intersection of said practice fields and SR 1521 (Gregory Cr.); thence in an easterly direction running along the northern margin of SR 1521 to the northwestern corner of the intersection of SR 1521 and SR 1535 (Main St./Mitchell Rd.); thence in a southerly direction running along the western margin of SR 1535 to the southwestern corner of the intersection of SR 1535 and SR 2002 (Kivett Rd.); thence in an easterly direction running along the southern margin of SR 2002 to the southwestern corner of the intersection of SR 2002 and SR 2084 (Leslie Campbell Rd.); thence in a southwesterly direction running along the northern margin of SR 2084 to the northeastern corner of the intersection of SR 2084; SR 2054 (Marshbanks St.), and SR 1535; thence in a southeasterly direction running along the eastern margin of SR 2054 to the southeastern corner of the intersection of SR 2054 and Pine Cone Rd.; thence in a southwesterly direction running along the southern margin of Pine Cone Rd. in the southeastern corner of the intersection of Pine Cone Rd. and Mae Byrd St.; thence in a southeasterly direction approximately 369

feet running along the eastern margin of Mae Byrd St. to a point; thence in a westerly direction to the southwestern corner of the intersection of NC Hwy. 421 and SR 2057 (Hatcher St.); thence in a southerly direction running along the western margin of SR 2057 to the northwestern corner of the intersection of SR 2057 and SR 2000 (Wade Stewart Cr.); thence in a westerly direction running along the northern margin of SR 2000 to the southwestern corner of the intersection of SR 2000 and Wade Stewart Ext.; thence in a southwesterly direction to the eastern bank of Buies Creek; thence in a southerly direction running along the eastern bank of Buies Creek and the exterior property lines of Campbell University and Norman A. Wiggins to the northern bank of the Cape Fear River; thence in a northwesterly direction running along the northern bank of the Cape Fear River to the northeastern corner of the intersection of the boundary of Campbell University property and the Cape Fear River; thence in a northeasterly direction along the exterior property lines of Campbell University to the southeastern corner of the intersection on SR 2075 and NC Hwy. 421, the point of BEGINNING.

And being the same area shown on plat by Joyner Piedmont Surveying entitled "CAMPBELL UNIVERSITY RESERVE" and dated August 20, 1998. Said plat is by reference incorporated in and made a part hereof.

Section 5. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 15th day of September, 1998.

Became law on the date it was ratified.

H.B. 1332

SESSION LAW 1998-144

AN ACT TO ALLOW THE CITY OF GREENVILLE TO UNDERTAKE ONE DOWNTOWN DEVELOPMENT PROJECT SUBJECT TO CERTAIN CONDITIONS.

The General Assembly of North Carolina enacts:

Section 1. The City of Greenville may exercise its authority under G.S. 160A-458.3 to undertake one downtown development project, subject to the following conditions:

- (1) The City shall not be required to locate a project authorized by G.S. 160A-458.3 in the central business district.
- (2) The City Council shall not be required to find that the project is likely to have a significant positive effect on the revitalization of the central business district.
- (3) The project shall not be subject to Article 8 of Chapter 143 of the General Statutes, if funds other than City funds constitute at least twenty-five percent (25%) of the total cost of the construction and renovation of the public and private facilities included in the project.

Section 2. This act only applies to one project that includes, as one of its facilities, the development of a convention center, civic center, or meeting facility within the corporate limits of the City of Greenville.

Section 3. This act only applies to the City of Greenville.

Section 4. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 15th day of September, 1998.

Became law on the date it was ratified.

H.B. 1613

SESSION LAW 1998-145**AN ACT ABOLISHING THE OFFICE OF CORONER IN MARTIN AND ROCKINGHAM COUNTIES.**

The General Assembly of North Carolina enacts:

Section 1. The office of coroner in Martin and Rockingham Counties is abolished.

Section 2. Chapter 152 of the General Statutes is not applicable to Martin and Rockingham Counties.

Section 3. This act becomes effective as to Martin County upon the expiration of the term of the current coroner in Martin County.

Section 4. This act becomes effective as to Rockingham County when it becomes law.

In the General Assembly read three times and ratified this the 15th day of September, 1998.

Became law on the date it was ratified.

S.B. 1230

SESSION LAW 1998-146**AN ACT TO CLARIFY THE TAXATION OF KEROSENE AND TO MAKE OTHER CHANGES IN THE MOTOR FUEL TAX LAWS.**

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-449.39 reads as rewritten:

"§ 105-449.39. *Credit for payment of motor fuel tax.*

Every motor carrier subject to the tax levied by this Article is entitled to a credit for tax paid by the carrier on fuel purchased in the State. A motor carrier who files a quarterly report is entitled to a credit at a rate equal to the flat cents-per-gallon rate plus the variable cents-per-gallon rate of tax in effect during the quarter for which the credit is claimed. A motor carrier who files an annual report is entitled to a credit at a rate equal to the flat cents-per-gallon rate plus the average of the two variable cents-per-gallon rates of tax in effect during the year for which the credit is claimed. To obtain a credit, the motor carrier must furnish evidence satisfactory to the Secretary that the tax for which the credit is claimed has been paid.

If the amount of a credit to which a motor carrier is entitled for a reporting period exceeds the motor carrier's liability for that reporting period, ~~the excess may, in accordance with rules adopted by the Secretary, be refunded to the motor carrier or carried forward and applied to the motor carrier's tax liability for another reporting period. Before the Secretary allows a motor carrier a refund, the Secretary may audit the motor carrier's records or require the motor carrier to furnish a bond under G.S. 105-449.40, the Secretary must refund the excess to the motor carrier."~~

Section 2. G.S. 105-449.52(b) reads as rewritten:

"(b) **Hearing.** -- Any person denying liability for a penalty imposed under this section ~~may~~ must pay the penalty under protest and apply to the Department of Revenue for a hearing. Upon receiving a request for a hearing, the Secretary shall schedule a hearing before a duly designated employee or agent of the Department within 30 days after receipt of the request. If after the hearing the Department determines that the person was not liable for the penalty, the amount collected shall be refunded. If after the hearing the Department determines that the person was liable for the penalty, the person paying the penalty may bring an action in the Superior Court of Wake County against the Secretary of Revenue for refund of the penalty. No restraining order or injunction shall issue from any court of the State to restrain or enjoin the collection of the penalty or to permit the operation of the vehicle without payment of the penalty."

Section 3. G.S. 105-449.60 reads as rewritten:

"< font= > § 105-449.60. Definitions.

The following definitions apply in this Article:

- (1) **Blended fuel.** -- A mixture composed of gasoline or diesel fuel and another liquid, other than a de minimus amount of a product such as carburetor detergent or oxidation inhibitor, that can be used as a fuel in a highway vehicle.
- (2) **Blender.** -- A person who produces blended fuel outside the terminal transfer system.
- (3) **Bulk-end user.** -- A person who maintains storage facilities for motor fuel and uses part or all of the stored fuel to operate a highway vehicle.
- (4) **Bulk plant.** -- A motor fuel storage and distribution facility that is not a terminal and from which motor fuel may be removed at a rack.
- (5) **Code.** -- Defined in G.S. 105-228.90.
- (6) **Destination state.** -- The state, territory, or foreign country to which motor fuel is directed for delivery into a storage facility, a receptacle, a container, or a type of transportation equipment for the purpose of resale or use.
- (7) **Diesel fuel.** -- Any liquid, other than gasoline, that is suitable for use as a fuel in a diesel-powered highway vehicle. The term includes kerosene. The term does not include jet fuel sold to a buyer who is certified to purchase jet fuel under the Code.
- (8) **Distributor.** -- A person who acquires motor fuel from a supplier or from another distributor for subsequent sale.
- (9) **Dyed diesel fuel.** -- Diesel fuel that meets the dyeing and marking requirements of § 4082 of the Code.
- (10) **Elective supplier.** -- A supplier that is required to be licensed in this State and that elects to collect the excise tax due this State on motor fuel that is removed by the supplier at a terminal located in another state and has this State as its destination state.
- (11) **Export.** -- To obtain motor fuel in this State for sale or other distribution in another state. In applying this definition, motor fuel delivered out-of-state by or for the seller constitutes an

- export by the seller and motor fuel delivered out-of-state by or for the purchaser constitutes an export by the purchaser.
- (12) Fuel alcohol. -- Methanol or fuel grade ethanol.
 - (13) Fuel alcohol provider. -- A person who does any of the following:
 - a. Produces fuel alcohol.
 - b. Imports fuel alcohol outside the terminal transfer system by means of a marine vessel, a transport truck, or a railroad tank car.
 - (14) Gasohol. -- A blended fuel composed of gasoline and fuel grade ethanol.
 - (15) Gasoline. -- Any of the following:
 - a. All products that are commonly or commercially known or sold as gasoline and are suitable for use as a fuel in a highway vehicle, other than products that have an American Society for Testing Materials octane number of less than 75 as determined by the motor method.
 - b. A petroleum product component of gasoline, such as naphtha, reformat, or toluene.
 - c. Gasohol.
 - d. Fuel grade ethanol.

The term does not include aviation gasoline sold for use in an aircraft motor. 'Aviation gasoline' is gasoline that is designed for use in an aircraft motor and is not adapted for use in an ordinary highway vehicle.
 - (16) Gross gallons. -- The total amount of motor fuel measured in gallons, exclusive of any temperature, pressure, or other adjustments.
 - (17) Highway. -- Defined in G.S. 20-4.01(13).
 - (18) Highway vehicle. -- A self-propelled vehicle that is designed for use on a highway.
 - (19) Import. -- To bring motor fuel into this State by any means of conveyance other than in the fuel supply tank of a highway vehicle. In applying this definition, motor fuel delivered into this State from out-of-state by or for the seller constitutes an import by the seller, and motor fuel delivered into this State from out-of-state by or for the purchaser constitutes an import by the purchaser.
 - (19a) In-State-only supplier. -- Either of the following:
 - a. A supplier that is required to have a license and elects not to collect the excise tax due this State on motor fuel that is removed by the supplier at a terminal located in another state and has this State as its destination state.
 - b. A supplier that does business only in this State.
 - (20) Motor fuel. -- Gasoline, diesel fuel, and blended fuel.
 - (21) Motor fuel rate. -- The rate of tax set in G.S. 105-449.80.
 - (22) Motor fuel transporter. -- A person who transports motor fuel outside the terminal transfer system by means of a transport truck, a railroad tank car, or a marine vessel.

- (23) Net gallons. -- The amount of motor fuel measured in gallons when corrected to a temperature of 60 degrees Fahrenheit and a pressure of 14 7/10 pounds per square inch.
- (24) Permissive supplier. -- An out-of-state supplier that elects, but is not required, to have a supplier's license under this Article.
- (25) Person. -- Defined in G.S. 105-228.90.
- (26) Position holder. -- The person who holds the inventory position in motor fuel in a terminal, as reflected on the records of the terminal operator. A person holds the inventory position in motor fuel when that person has a contract with the terminal operator for the use of storage facilities and terminaling services for fuel at the terminal. The term includes a terminal operator who owns fuel in the terminal.
- (27) Rack. -- A mechanism for delivering motor fuel from a refinery, a terminal, or a bulk plant into a transport truck, a railroad tank car, or another means of transfer that is outside the terminal transfer system.
- (28) Removal. -- A physical transfer other than by evaporation, loss, or destruction. A physical transfer to a transport truck or another means of conveyance outside the terminal transfer system is complete upon delivery into the means of conveyance.
- (29) Retailer. -- A person who maintains storage facilities for motor fuel and who sells the fuel at retail or dispenses the fuel at a retail location.
- (30) Secretary. -- Defined in G.S. 105-228.90.
- (31) Supplier. -- Any of the following:
 - a. A position holder or a person who receives motor fuel pursuant to a two-party ~~exchange~~ transaction.
 - b. A fuel alcohol provider.
- (32) System transfer. -- Either of the following:
 - a. A transfer of motor fuel within the terminal transfer system.
 - b. A transfer, by transport truck or railroad tank car, of fuel grade ethanol.
- (33) Tank wagon. -- A truck that is not a transport truck and has multiple compartments designed or used to carry motor fuel.
- (33a) Tax. -- An inspection or other excise tax on motor fuel and any other fee or charge imposed on motor fuel on a per-gallon basis.
- (34) Terminal. -- A motor fuel storage and distribution facility that has been assigned a terminal control number by the Internal Revenue Service, is supplied by pipeline or marine vessel, and from which motor fuel may be removed at a rack.
- (35) Terminal operator. -- A person who owns, operates, or otherwise controls a terminal.
- (36) Terminal transfer system. -- The motor fuel distribution system consisting of refineries, pipelines, marine vessels, and terminals. The term has the same meaning as 'bulk transfer/terminal system' under 26 C.F.R. § 48.4081-1.
- (37) Transmix. -- Either of the following:

- a. The buffer or interface between two different products in a pipeline shipment.
 - b. A mix of two different products within a refinery or terminal that results in an off-grade mixture.
- (38) Transport truck. -- A semitrailer combination rig designed or used to transport loads of motor fuel over a highway.
- (39) Trustee. -- A person who is licensed as a supplier, an elective supplier, or a permissive supplier and who receives tax payments from and on behalf of a licensed distributor.
- (40) Two-party ~~exchange~~ transaction. -- A transaction in which motor fuel is transferred ~~from one licensed supplier to another licensed supplier pursuant to an exchange agreement whereby the supplier that is the position holder agrees between two licensed suppliers as the motor fuel crosses the terminal rack as the result of an exchange agreement or a sale between the suppliers that requires the supplier that is the position holder to deliver motor fuel to the other supplier or the other supplier's customer at the rack of the terminal at which the delivering supplier is the position holder.~~
- (41) User. -- A person who owns or operates a licensed highway vehicle and does not maintain storage facilities for motor fuel."

Section 4. G.S. 105-449.72 is amended by adding the following new subsection to read:

"(d) Replacements. -- When a license holder files a bond or an irrevocable letter of credit as a replacement for a previously filed bond or letter of credit and the license holder has paid all taxes and penalties due under this Article, the Secretary must take one of the following actions:

- (1) Return the previously filed bond or letter of credit.
- (2) Notify the person liable on the previously filed bond and the license holder that the person is released from liability on the bond."

Section 5. G.S. 105-449.87(b) reads as rewritten:

"(b) Liability. -- The operator of a highway vehicle that uses motor fuel that is taxable under this section is liable for the tax. If the highway vehicle that uses the fuel is owned by or leased to a motor carrier, the motor carrier is jointly and severally liable for the tax. If the end seller of motor fuel taxable under this section knew or had reason to know that the motor fuel would be used for a purpose that is taxable under this section, the end seller is jointly and severally liable for the tax. If the Secretary determines that a bulk-end user or retailer used or sold untaxed dyed diesel fuel to operate a highway vehicle when the fuel is dispensed from a storage facility or through a meter marked for nonhighway use, all fuel delivered into that storage facility is presumed to have been used to operate a highway vehicle."

Section 6. G.S. 105-449.88 reads as rewritten:

"§ 105-449.88. *Exemptions from the excise tax.*

The excise tax on motor fuel does not apply to the following:

- (1) Motor fuel removed, by transport truck or another means of transfer outside the terminal transfer system, from a terminal for

export, if the supplier of the motor fuel collects tax on it at the rate of the motor fuel's destination state.

- (2) Motor fuel sold to the federal government.
- (3) Motor fuel sold to the State for its use.
- (4) Motor fuel sold to a local board of education for use in the public school system.
- (5) Diesel that is kerosene and is sold to an airport."

Section 7. G.S. 105-449.94 is amended by adding the following new subsection to read:

"(e) Penalty. -- A licensed distributor or a licensed importer that deducts an exempt sale when paying tax to a supplier and does not report the sale by filing the return required by this section is liable for a penalty of two hundred fifty dollars (\$250.00)."

Section 8. Part 5 of Article 36C of Chapter 105 of the General Statutes is amended by adding a new section to read:

"§ 105-449.105A. Monthly refunds for kerosene.

A distributor who sells kerosene to any of the following may obtain a refund for the excise tax the distributor paid on the kerosene, less the amount of any discount allowed on the kerosene under G.S. 105-449.93:

- (1) The end user of the kerosene, if the distributor dispenses the kerosene into a storage facility of the end user that contains fuel used only for heating.
- (2) A retailer of kerosene, if the distributor dispenses the kerosene into a storage facility that is marked for nonhighway use in accordance with the requirements in G.S. 105-449.123(a)(1) through (a)(3) and has a dispensing device that is not suitable for use in fueling a highway vehicle."

Section 9. G.S. 105-164.13(11)a. reads as rewritten:

"a. Motor fuel, as defined in G.S. 105-449.60, except motor fuel for which a refund of the per gallon excise tax is allowed under G.S. 105-449.105(c) or ~~(d)~~ (d), under G.S. 105-449.105A, or under G.S. 105-449.107."

Section 10. G.S. 105-449.108 reads as rewritten:

"§ 105-449.108. When an application for a refund is due.

(a) Annual Refunds. -- An application for an annual refund of excise tax is due by April 15 following the end of the calendar year for which the refund is claimed. The application must state whether or not the applicant has filed a North Carolina income tax return for the preceding taxable year, and must state that the applicant has paid for the fuel for which a refund is claimed or that payment for the fuel has been secured to the seller's satisfaction. Due Dates. -- The due dates of applications for refunds are as follows:

<u>Refund Period</u>	<u>Due Date</u>
<u>Annual</u>	<u>April 15 after the end of the year</u>
<u>Quarterly</u>	<u>Last day of the month after the end of the quarter</u>
<u>Monthly</u>	<u>22nd day after the end of the month</u>

Upon Application

Last day of the month after the month in which tax was paid or the event occurred that is the basis of the refund.

~~(b) Quarterly Refunds. -- An application for a quarterly refund of excise tax is due by the last day of the month following the end of the calendar quarter for which the refund is claimed. The application must state that the applicant has paid for the fuel for which a refund is claimed or that payment for the fuel has been secured to the seller's satisfaction. Requirements. -- An application for an annual refund must state whether or not the applicant has filed a North Carolina income tax return for the preceding taxable year. An application for a refund allowed under this Part must state that the applicant has paid for the fuel for which a refund is claimed or that payment for the fuel has been secured to the seller's satisfaction.~~

~~(c) Upon Application. -- An application for a refund of excise tax upon application under G.S. 105-449.105 is due by the last day of the month that follows the payment of tax or other event that is the basis of the refund."~~

Section 11. G.S. 105-449.132 reads as rewritten:

"§ 105-449.132. How to apply for a license.

To obtain a license, an applicant must file an application with the Secretary on a form provided by the Secretary. An application must include the applicant's name, address, federal employer identification number, and any other information required by the Secretary. An applicant must meet the requirements for obtaining a license set out in G.S. 105-449.69(b)."

Section 12. The following persons who have kerosene that is on hand or in their possession as of 12:01 a.m. on July 1, 1998, and is not in the terminal transfer system must inventory the kerosene and report the results of the inventory to the Secretary of Revenue:

- (1) Retailers who maintain storage facilities for kerosene of at least 2,000 gallons.
- (2) Distributors.
- (3) Importers.
- (4) Suppliers.

The amount of kerosene in dead storage is not considered to be part of inventory and shall not be included in the report. "Dead storage" is the amount of kerosene in a storage tank that will not be pumped out of the tank because the kerosene is below the mouth of the draw pipe. For a storage tank with a capacity of less than 2,000 gallons, the amount of kerosene in dead storage is considered to be 200 gallons. For a storage tank with a capacity of 2,000 gallons or more, the amount of kerosene in dead storage is considered to be 400 gallons. The report of inventory must be made on a form provided by the Secretary. The report is due by July 15, 1998.

Section 13. Section 7 of this act becomes effective January 1, 1999. Section 1 applies to credits generated from reports filed by motor carriers for the reporting period beginning July 1, 1998. G.S. 105-449.60(7), as amended by Section 3 of this act, and Sections 8 and 9 of this act apply to kerosene sold on or after July 1, 1998. G.S. 105-449.60(31) and (40), as amended by Section 3 of this act, apply to transactions occurring on or after January 1, 1999. The remaining sections of this act are effective when they become law.

In the General Assembly read three times and ratified this the 9th day of September, 1998.

Became law upon approval of the Governor at 9:45 a.m. on the 18th day of September, 1998.

S.B. 1407

SESSION LAW 1998-147

AN ACT TO PROVIDE BENEFITS UNDER THE REGISTERS OF DEEDS' SUPPLEMENTAL PENSION FUND ACT TO REGISTERS OF DEEDS WHO ARE OTHERWISE NOT ELIGIBLE SOLELY BECAUSE THE COUNTY DOES NOT PARTICIPATE IN THE LOCAL GOVERNMENTAL EMPLOYEES' RETIREMENT SYSTEM.

The General Assembly of North Carolina enacts:

Section 1. G.S. 161-50.4 reads as rewritten:

"§ 161-50.4. *Eligibility.*

(a) Each county register of deeds who has retired with at least 12 years eligible service as register of deeds from the Local Governmental Employees' Retirement System or an equivalent locally sponsored plan before June 30, 1988, and those who retire on or after June 30, 1988, but before July 1, 1991, and who have completed at least 12 years of eligible service as register of deeds is entitled to receive a monthly pension under this Article, beginning July 1, 1988. Effective July 1, 1991, each county register of deeds who retires with at least 10 years of eligible service as register of deeds is entitled to receive a monthly pension under this Article.

(a1) Notwithstanding the provisions of subsection (a) of this section, effective January 1, 1996, any county register of deeds who separates from service as register of deeds after completing at least 10 years of eligible service as register of deeds, but who does not commence retirement with the Local Governmental Employees' Retirement System, shall have the right to receive a monthly pension under this Article payable upon retirement with the Local Governmental Employees' Retirement System.

(a2) Each county register of deeds who is not eligible to retire with the Local Governmental Employees' Retirement System solely because the county has not elected to participate as an employer with the Local Governmental Employees' Retirement System and who has either (i) attained the age of 65, (ii) attained 30 years of creditable service regardless of age, or (iii) attained the age of 60 with not less than 25 years of creditable service, and who has completed at least 10 years of creditable service as a register of deeds is entitled to receive a monthly pension under this Article, provided that register of deeds is not eligible to receive any retirement benefits from any State or locally sponsored plan.

(b) Each eligible retired register of deeds as defined in subsection ~~(a) or (a1)~~ (a), (a1), or (a2) of this section relating to service and retirement status on January 1 of each calendar year shall be entitled to receive a monthly pension under this Article beginning with the month of January of the same calendar year."

Section 2. G.S. 161-50.5 is amended by adding a new subsection to read:

"(a) A register of deeds eligible under G.S. 161-50.4 (a2) shall be entitled to receive an annual pension benefit, payable in equal monthly installments as determined under the provisions of subsection (a) of this section, but reduced by an amount equal to the benefit that would be payable from the Local Governmental Employees' Retirement System if the register of deeds had been a member of the Local Governmental Employees' Retirement System and all of the years of local service were creditable to that System."

Section 3. This act becomes effective July 1, 1998.

In the General Assembly read three times and ratified this the 10th day of September, 1998.

Became law upon approval of the Governor at 9:50 a.m. on the 18th day of September, 1998.

H.B. 1342

SESSION LAW 1998-148

AN ACT TO AMEND AND CLARIFY THE RENUNCIATION OF PROPERTY AND RENUNCIATION OF FIDUCIARY POWERS ACT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 31B-1(b) reads as rewritten:

"(b) ~~In no event shall the persons who succeed to the renounced interest receive from the renouncement a greater share than the renouncer would have received.~~ This Chapter shall apply to all renunciations of present and future interests, whether qualified or nonqualified for federal and State inheritance, estate, and gift tax purposes, unless expressly provided otherwise in the instrument creating the interest."

Section 2. G. S. 31B-2(a) reads as rewritten:

"(a) To be a qualified disclaimer for federal and State inheritance, estate, and gift tax purposes, ~~An~~ an instrument renouncing a present interest shall be filed within the time period required under the applicable federal statute for a renunciation to be given effect as a disclaimer for federal estate and gift tax purposes. If there is no such federal statute the instrument shall be filed not later than nine months after the ~~death of the decedent or donee of the power,~~ date the transfer of the renounced interest to the renouncer was complete for the purpose of such taxes."

Section 3. G.S. 31B-3(a) reads as rewritten:

"(a) Unless the ~~decedent or decedent,~~ donee of ~~the~~ a power of appointment, or creator of an interest under an inter vivos instrument has otherwise provided in the instrument creating the interest, the property or interest renounced devolves as follows:

- (1) If the renunciation is filed within the time period described in G.S. 31B-2(a), the property or interest renounced devolves as if the renouncer had predeceased the ~~decedent or,~~ if the renouncer is designated to take under a power of appointment exercised by a testamentary instrument, as if the renouncer had predeceased the donee of the power, date the transfer of the renounced interest to the renouncer was complete for federal and State inheritance, estate, and gift tax purposes, or, in the case of the renunciation of

a fiduciary right, power, privilege, or immunity, the property or interest subject to the power devolves as if the fiduciary right, power, privilege, or immunity never existed. A future interest that takes effect in possession or enjoyment after the termination of the estate or interest renounced takes effect as if the renouncer had predeceased the decedent or the donee of the power. A Any such renunciation relates back for all purposes to the date of the death of the decedent or the donee of the power, the transfer of the renounced interest to the renouncer was complete for the purpose of those taxes.

- (2) If the renunciation is not filed within the time period described in G.S. 31B-2(a), the property or interest devolves as if the renouncer had died on the date the renunciation is filed, or, in the case of the renunciation of a fiduciary right, power, privilege, or immunity, the property or interest subject to the power devolves as if the fiduciary right, power, privilege, or immunity ceased to exist as of the date the renunciation is filed.
- (3) Any future interest that takes effect in possession or enjoyment after the termination of the estate or interest renounced takes effect as if the renouncer had died on the date determined under subdivision (1) or (2) of this subsection, and upon the filing of the renunciation the persons in being as of the time the renouncer is deemed to have died will immediately become entitled to possession or enjoyment of any such future interest."

Section 4. Subdivision (3) of G.S. 31B-4(a) is repealed.

Section 5. G.S. 31B-4 is amended by adding the following new subsection to read:

"(e) The right to renounce property or an interest in property pursuant to this Chapter is not barred by an acceptance of the property, interest, or benefit thereunder; provided, however, an acceptance of the property, interest, or benefit thereunder may preclude such renunciation from being a qualified renunciation for federal and State inheritance, estate, and gift tax purposes."

Section 6. This act is effective when it becomes law and applies to all renunciations executed on or after the effective date of this act, whether qualified or nonqualified for federal and State inheritance, estate, and gift tax purposes. This act shall not apply to any renunciation executed before the effective date of this section whether qualified or nonqualified for federal and State inheritance, estate, and gift tax purposes, of an interest in a testamentary or inter vivos trust, unless the trustee within six months after the effective date of this act executes and records with the clerk of court of the county in which probate proceedings have been commenced, if any, or the county in which the property is located, an instrument evidencing the acceleration of the possession and enjoyment of the renounced interest to persons in esse at the time of the filing of the renunciation. This act shall not apply to remove the rights of a current beneficiary who has received an interest in a trust between the date of the filing of a renunciation and the date of the filing by a trustee pursuant to the preceding sentence.

In the General Assembly read three times and ratified this the 10th day of September, 1998.

Became law upon approval of the Governor at 9:55 a.m. on the 18th day of September, 1998.

H.B. 1474

SESSION LAW 1998-149

AN ACT TO AMEND THE MOTOR VEHICLE LAWS TO CONFORM WITH FEDERAL LAW AND TO MAKE TECHNICAL AND OTHER CHANGES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-4.01(25a) reads as rewritten:

"(25a) Out of Service Order. -- ~~A temporary prohibition against driving a commercial motor vehicle.~~ A declaration that a driver, a commercial motor vehicle, or a motor carrier operation is out-of-service."

Section 2. G.S. 20-7(f) reads as rewritten:

"(f) Expiration and Temporary License. -- The first drivers license the Division issues to a person expires on the person's fourth or subsequent birthday that occurs after the license is issued and on which the individual's age is evenly divisible by five, unless this subsection sets a different expiration date. The first drivers license the Division issues to a person who is at least 17 years old but is less than 18 years old expires on the person's twentieth birthday. The first drivers license the Division issues to a person who is at least 62 years old expires on the person's birthday in the fifth year after the license is issued, whether or not the person's age on that birthday is evenly divisible by five.

A drivers license that was issued by the Division and is renewed by the Division expires five years after the expiration date of the license that is renewed. A person may apply to the Division to renew a license during the ~~60-day~~ 180-day period before the license expires. The Division may not accept an application for renewal made before the ~~60-day~~ 180-day period begins.

The Division may renew by mail a drivers license issued by the Division to a person who meets any of the following descriptions:

- (1) Is serving on active duty in the armed forces of the United States and is stationed outside this State.
- (2) Is a resident of this State and has been residing outside the State for at least 30 continuous days.

When renewing a license by mail, the Division may waive the examination that would otherwise be required for the renewal and may impose any conditions it finds advisable. A license renewed by mail is a temporary license that expires 60 days after the person to whom it is issued returns to this State."

Section 2.1. G.S. 20-11(h) reads as rewritten:

"(h) ~~Out of State Exceptions.~~ Exception for Persons 16 to 18 Who Have an Unrestricted Out-of-State License. -- A person who is at least 16 years old but less than 18 years old, who was a resident of another state and

has an unrestricted drivers license issued by that state, and who becomes a resident of this State may obtain one of the following upon submission of a driving eligibility certificate or a high school diploma or its equivalent:

- (1) A temporary permit, if the person has not completed a drivers education program that meets the requirements of the Superintendent of Public Instruction but is currently enrolled in a drivers education program that meets these requirements. A temporary permit is valid for the period specified in the permit and authorizes the holder of the permit to drive a specified type or class of motor vehicle when in possession of the permit, subject to any restrictions imposed by the Division concerning time of driving, supervision, and passenger limitations. The period must end within 10 days after the expected completion date of the drivers education program in which the applicant is enrolled.
- (2) A full provisional license, if the person has completed a drivers education program that meets the requirements of the Superintendent of Public Instruction, has held the license issued by the other state for at least 12 months, and has not been convicted during the preceding six months of a motor vehicle moving violation, a seat belt infraction, or an offense committed in another jurisdiction that would be a motor vehicle moving violation or seat belt infraction if committed in this State.
- (3) A limited provisional license, if the person has completed a drivers education program that meets the requirements of the Superintendent of Public Instruction but either did not hold the license issued by the other state for at least 12 months or was convicted during the preceding six months of a motor vehicle moving violation, a seat belt infraction, or an offense committed in another jurisdiction that would be a motor vehicle moving violation or seat belt infraction if committed in this State."

Section 2.2. G.S. 20-11 is amended by adding a new subsection to read:

"(h1) Exception for Persons 16 to 18 Who Have an Out-of-State Restricted License. -- A person who is at least 16 years old but less than 18 years old, who was a resident of another state and has a restricted drivers license issued by that state, and who becomes a resident of this State may obtain one of the following:

- (1) A limited provisional license, if the person has completed a drivers education program that meets the requirements of the Superintendent of Public Instruction, held the restricted license issued by the other state for at least 12 months, and whose parent or guardian certifies that the person has not been convicted during the preceding six months of a motor vehicle moving violation, a seat belt infraction, or an offense committed in another jurisdiction that would be a motor vehicle moving violation or seat belt infraction if committed in this State.
- (2) A limited learners permit, if the person has completed a drivers education program that meets the requirements of the Superintendent of Public Instruction but either did not hold the

restricted license issued by the other state for at least 12 months or was convicted during the preceding six months of a motor vehicle moving violation, a seat belt infraction, or an offense committed in another jurisdiction that would be a motor vehicle moving violation or seat belt infraction if committed in this State. A person who qualifies for a limited learners permit under this subdivision and whose parent or guardian certifies that the person has not been convicted of a moving violation in the preceding six months shall be deemed to have held a limited learners permit in this State for each month the person held a restricted license in another state."

Section 2.3. G.S. 20-11 is amended by adding a new subsection to read:

"(h2) Exception for Persons Age 15 Who Have an Out-of-State Unrestricted or Restricted License. -- A person who is age 15, who was a resident of another state, has an unrestricted or restricted drivers license issued by that state, and who becomes a resident of this State may obtain a limited learners permit if the person has completed a drivers education program that meets the requirements of the Superintendent of Public Instruction. A person who qualifies for a limited learners permit under this subsection and whose parent or guardian certifies that the person has not been convicted of a moving violation in the preceding six months shall be deemed to have held a limited learners permit in this State for each month the person held an unrestricted or restricted license in another state."

Section 2.4. G.S. 20-11(i) reads as rewritten:

"(i) Application. -- An application for a permit or license authorized by this section must be signed by both the applicant and another person. That person must be be:

- (1) ~~the~~ The applicant's parent or guardian if the parent or guardian resides in this State and is qualified to be a supervising driver. In all other circumstances, that person must be an adult approved by the Division. guardian;
- (2) A person approved by the applicant's parent or guardian; or
- (3) A person approved by the Division."

Section 2.5. G.S. 20-11(k) reads as rewritten:

"(k) Supervising Driver. -- A supervising driver must be a parent or guardian of the permit holder or license holder if a parent or guardian signed the application for the permit or license. If a parent or guardian did not sign the application, the supervising driver must be the adult who signed the application, or a responsible person approved by the parent or guardian or the Division. A supervising driver must be a licensed driver who has been licensed to drive for at least five years. A supervising driver must sign the application for a permit or license. Each permit or license issued pursuant to this section shall be limited to a maximum of two supervising drivers."

Section 3. G.S. 20-17.4 reads as rewritten:

"§ 20-17.4. Disqualification to drive a commercial motor vehicle.

(a) One Year. -- Any of the following disqualifies a person from driving a commercial motor vehicle for one year:

- (1) A first conviction of G.S. 20-138.1, driving while impaired, that occurred while the person was driving a commercial motor vehicle.
- (2) A first conviction of G.S. 20-138.2, driving a commercial motor vehicle while impaired.
- (3) A first conviction of G.S. 20-166, hit and run, involving a commercial motor vehicle driven by the person.
- (4) A first conviction of a felony in the commission of which a commercial motor vehicle was used.
- (5) Refusal to submit to a chemical test when charged with an implied-consent offense, as defined in G.S. 20-16.2, that occurred while the person was driving a commercial motor vehicle.

(b) **Modified Life.** -- A person who has been disqualified from driving a commercial motor vehicle for a conviction or refusal described in subsection (a) who, as the result of a separate incident, is subsequently convicted of an offense or commits an act requiring disqualification under subsection (a) is disqualified for life. The Division may adopt guidelines, including conditions, under which a disqualification for life under this subsection may be reduced to 10 years.

(c) **Life.** -- A person is disqualified from driving a commercial motor vehicle for life if that person uses a commercial motor vehicle in the commission of any felony involving the manufacture, distribution, or dispensing of a controlled substance, or possession with intent to manufacture, distribute, or dispense a controlled substance.

(d) **Less Than a Year.** -- A person is disqualified from driving a commercial motor vehicle for 60 days if that person is convicted of two serious traffic violations, or 120 days if convicted of three or more serious traffic violations, committed in a commercial motor vehicle arising from separate incidents occurring within a three-year period.

(e) **Three Years.** -- A person is disqualified from driving a commercial motor vehicle for three years if that person is convicted of an offense or commits an act requiring disqualification under subsection (a) and the offense or act occurred while the person was transporting a hazardous material that required the motor vehicle driven to be placarded.

(f) **Revocation Period.** -- A person is disqualified from driving a commercial motor vehicle for the period during which the person's regular or commercial drivers license is revoked.

(g) **Violation of Out-of-Service Order.** -- Any person convicted for violating an out-of-service order, except as described in subsection (h) of this section, shall be disqualified as follows:

- (1) A person is disqualified from driving a commercial vehicle for a period of 90 days if convicted of a first violation of an out-of-service order.
- (2) A person is disqualified for a period of one year if convicted of a second violation of an out-of-service order during any 10-year period, arising from separate incidents.
- (3) A person is disqualified for a period of three years if convicted of a third or subsequent violation of an out-of-service order during any 10-year period, arising from separate incidents.

(h) Violation of Out-of-Service Order; Special Rule for Hazardous Materials and Passenger Offenses. -- Any person convicted for violating an out-of-service order while transporting hazardous materials or while operating a commercial vehicle designed or used to transport more than 15 passengers, including the driver, shall be disqualified as follows:

- (1) A person is disqualified for a period of 180 days if convicted of a first violation of an out-of-service order.
- (2) A person is disqualified for a period of three years if convicted of a second or subsequent violation of an out-of-service order during any 10-year period, arising from separate incidents.

(i) Disqualification for Out-of-State Violations. -- The Division shall withdraw the privilege to operate a commercial vehicle of any resident of this State upon receiving notice of the person's conviction in another state for an offense that, if committed in this State, would be grounds for disqualification. The period of disqualification shall be the same as if the offense occurred in this State.

(j) Disqualification of Persons Without Commercial Drivers Licenses. -- Any person convicted of an offense that requires disqualification under this section, but who does not hold a commercial drivers license, shall be disqualified from operating a commercial vehicle in the same manner as if the person held a valid commercial drivers license."

Section 4. G.S. 20-37.12(b) reads as rewritten:

"(b) The out-of-service criteria as referred to in 49 C.F.R. §§392.5 and 395.13, as adopted by the Division, Subchapter B apply to a person who drives a commercial motor vehicle. No person shall drive a commercial motor vehicle on the highways of this State in violation of an out-of-service order."

Section 5. G.S. 20-37.16(c) reads as rewritten:

"(c) Endorsements. -- The endorsements required to drive certain motor vehicles are as follows:

Endorsement

Vehicles That Can Be Driven

H	Vehicles carrying hazardous materials, other than tank vehicles <u>Vehicles, regardless of size or class, except tank vehicles, when transporting hazardous materials that require the vehicle to be placarded</u>
M	Motorcycles
N	Tank vehicles not carrying hazardous materials
P	Vehicles carrying passengers
T	Double trailers
X	Tank vehicles carrying hazardous materials.

To obtain an H or an X endorsement, an applicant must take a test. This requirement applies when a person first obtains an H or an X endorsement and each time a person renews an H or an X endorsement. An applicant who has an H or an X endorsement issued by another state who applies for an H or an X endorsement must take a test unless the person has passed a test that covers the information set out in 49 C.F.R. § 383.121 within the preceding two years."

Section 6. G.S. 20-115.1(b) reads as rewritten:

"(b) Motor vehicle combinations consisting of a semitrailer of not more than 53 feet in length and a truck tractor may be operated on the interstate highways (except those exempted by the United States Secretary of Transportation pursuant to 49 U.S.C. 2311(i)) and federal-aid primary system highways designated by the United States Secretary of Transportation provided ~~that that~~:

- (1) ~~any Any~~ semitrailer in excess of 48 feet in length shall not be permitted ~~unless unless~~:
 - a. ~~the~~ The distance between the kingpin of the trailer and the rearmost ~~axle axle~~, or a point midway between the two rear axles, if the two rear axles are a tandem axle, does not exceed 41 feet; ~~and or~~
 - b. The semitrailer is used exclusively or primarily to transport vehicles in connection with motorsports competition events, and the distance between the kingpin of the trailer and the rearmost axle, or a point midway between the two rear axles, if the two rear axles are a tandem axle, does not exceed 46 feet; and
- (2) ~~provided that any~~ Any semitrailer in excess of 48 feet is equipped with a rear underride guard of substantial construction consisting of a continuous lateral beam extending to within four inches of the lateral extremities of the semitrailer and located not more than 30 inches from the surface as measured with the vehicle empty and on a level surface."

Section 7. G.S. 20-116(d) reads as rewritten:

"(d) A single vehicle having two axles shall not exceed ~~35~~ 40 feet in length of extreme overall dimensions inclusive of front and rear bumpers. ~~Provided, however, a bus or motor home with two axles shall not exceed 40 feet in length overall of dimensions inclusive of front and rear bumpers.~~ A single vehicle having three axles shall not exceed 40 feet in length overall of dimensions inclusive of front and rear bumpers. Provided, ~~further, however,~~ trucks transporting unprocessed cotton from farm to gin shall not exceed 48 feet in length overall of dimensions inclusive of front and rear bumpers. A truck-tractor and semitrailer shall be regarded as two vehicles for the purpose of determining lawful length and license taxes."

Section 8. G.S. 20-118(b)(3) reads as rewritten:

"(3) The gross weight imposed upon the highway by any axle group of a vehicle or combination of vehicles shall not exceed the maximum weight given for the respective distance between the first and last axle of the group of axles measured longitudinally to the nearest foot as set forth in the following table:

Distance Between Axles*	Maximum Weight in Pounds for any Group of Two or More Consecutive Axles					
	2 Axles	3 Axles	4 Axles	5 Axles	6 Axles	7 Axles
4	38000					
5	38000					
6	38000					
7	38000					
8 or less	38000	38000				

more than 8	38000	42000				
9	39000	42500				
10	40000	43500				
11		44000				
12		45000	50000			
13		45500	50500			
14		46500	51500			
15		47000	52000			
16		48000	52500	58000		
17		48500	53500	58500		
18		49500	54000	59000		
19		50000	54500	60000		
20		51000	55500	60500	66000	
21		51500	56000	61000	66500	
22		52500	56500	61500	67000	
23		53000	57500	62500	68000	
24		54000	58000	63000	68500	74000
25		54500	58500	63500	69000	74500
26		55500	59500	64000	69500	75000
27		56000	60000	65000	70000	75500
28		57000	60500	65500	71000	76500
29		57500	61500	66000	71500	77000
30		58500	62000**	66500	72000	77500
31		59000	62500**	67500	72500	78000
32		60000	63500**	68000	73000	78500
33			64000**	68500	74000	79000
34			64500**	69000	74500	80000
35			65500**	70000	75000	
36			66000**	70500	75500	
37			66500**	71000	76000	
38			67500**	72000	77000	
39			68000	72500	77500	
40			68500	73000	78000	
41			69500	73500	78500	
42			70000	74000	79000	
43			70500	75000	80000	
44			71500	75500		
45			72000	76000		
46			72500	76500		
47			73500	77500		
48			74000	78000		
49			74500	78500		
50			75500	79000		
51			76000	80000		
52			76500			
53			77500			
54			78000			
55			78500			
56			79500			

57

80000

*Distance in Feet Between the Extremes of any Group of Two or More Consecutive Axles.

**See exception in G.S. 20-118(c)(1)."

Section 9. G.S. 20-118(c)(10) reads as rewritten:

"(10) Fully enclosed motor vehicles designed specifically for collecting, compacting and hauling garbage from residences, or from garbage dumpsters shall, when operating for those purposes, be allowed a single axle weight not to exceed 23,500 pounds on the steering axle on vehicles equipped with a boom, or on the rear axle on vehicles loaded from the rear. This exemption shall not apply to vehicles operating on interstate highways, vehicles transporting hazardous waste as defined in G.S. 130A-290(a)(8), spent nuclear fuel regulated under G.S. 20-167.1, low-level radioactive waste as defined in G.S. 104E-5(9a), or radioactive material as defined in G.S. 104E-5(14)."

Section 9.1. G.S. 20-118(c) is amended by adding a new subdivision to read:

"(13) Vehicles specifically designed for fire fighting that are owned by a municipal or rural fire department. This exception does not apply to vehicles operating on interstate highways."

Section 9.2. G.S. 20-183(b) reads as rewritten:

"(b) In addition to other duties and powers heretofore existing, all law-enforcement officers charged with the duty of enforcing the motor vehicle laws are authorized to issue warning tickets to motorists for conduct constituting a potential hazard to the motoring public which does not amount to a definite, clear-cut, substantial violation of the motor vehicle laws. Each warning ticket issued ~~shall be prenumbered and~~ shall contain information necessary to identify the offender, and shall be signed by the issuing officer. A copy of each warning ticket issued shall be delivered to ~~such offender and a copy thereof forwarded by the issuing officer forthwith to the Driver License Section of the Division of Motor Vehicles~~ the offender. Information from issued warning tickets shall be made available to the Drivers License Section of the Division of Motor Vehicles in a manner approved by the Commissioner but shall not be filed with or in any manner become a part of the offender's driving record. Warning tickets issued as well as the fact of issuance shall be privileged information and available only to authorized personnel of the Division for statistical and analytical purposes."

Section 10. G.S. 20-217(a) reads as rewritten:

"(a) The driver of any vehicle upon approaching from any direction on the same ~~street or highway~~ street, highway, or public vehicular area any school bus (including privately owned buses transporting children and school buses transporting senior citizens under G.S. 115C-243), while the bus is displaying its mechanical stop signal or flashing red stoplights, and is stopped for the purpose of receiving or discharging passengers, shall bring ~~his~~ the vehicle to a full stop before passing or attempting to pass the bus, and shall remain stopped until the mechanical stop signal has been withdrawn, the flashing red stoplights have been turned off, and the bus has moved on."

Section 11. G.S. 20-376(1) reads as rewritten:

"(1) Federal safety and hazardous materials regulations. -- The federal motor carrier safety regulations contained in 49 C.F.R. Parts 170 through 190, ~~382~~ 382, and 390 through 398."

Section 11.1. G.S. 163-82.19 reads as rewritten:

"§ 163-82.19. *Voter registration at drivers license offices.*

The Division of Motor Vehicles shall, pursuant to the rules adopted by the State Board of Elections, modify its forms so that any eligible person who applies for original issuance, renewal or correction of a drivers license, or special identification card issued under G.S. 20-37.7 may, on a part of the form, complete an application to register to vote or to update his registration if the voter has changed his address or moved from one precinct to another or from one county to another. The person taking the application shall ask if the applicant is a citizen of the United States. If the applicant states that the applicant is not a citizen of the United States, or declines to answer the question, the person taking the application shall inform the applicant that it is a felony for a person who is not a citizen of the United States to apply to register to vote. Any person who willfully and knowingly and with fraudulent intent gives false information on the application is guilty of a Class I felony. The application shall state in clear language the penalty for violation of this section. The necessary forms shall be prescribed by the State Board of Elections. The form must ask for the previous voter registration address of the voter, if any. If a previous address is listed, and it is not in the county of residence of the applicant, the appropriate county board of elections shall treat the application as an authorization to cancel the previous registration and also process it as such under the procedures of G.S. 163-82.9. If a previous address is listed and that address is in the county where the voter applies to register, the application shall be processed as if it had been submitted under G.S. 163-82.9.

Registration shall become effective as provided in G.S. 163-82.7. Applications to register to vote accepted at a drivers license office under this section until the deadline established in G.S. 163-82.6(c)(2) shall be treated as timely made for an election, and no person who completes an application at that drivers license office shall be denied the vote in that election for failure to apply earlier than that deadline.

All applications shall be forwarded by the Department of Transportation to the appropriate board of elections not later than five business days after the date of acceptance, according to rules which shall be promulgated by the State Board of Elections."

Section 12. G.S. 20-381 reads as rewritten:

"§ 20-381. *Specific powers and duties of Division applicable to motor carriers.*

The Division has the following powers and duties concerning motor carriers:

- (1) To prescribe qualifications and maximum hours of service of drivers and their helpers.
- (1a) To set safety standards for vehicles of motor carriers engaged in foreign, interstate, or intrastate commerce over the highways of this State and for the safe operation of these vehicles. The Division may stop, enter upon, and perform inspections of motor

- carriers' vehicles in operation to determine compliance with these standards and may conduct any investigations and tests it finds necessary to promote the safety of equipment and the safe operation on the highway of these vehicles.
- (1b) To enforce this Article, rules adopted under this Article, and the federal safety and hazardous materials regulations.
 - (2) To enter the premises of a motor carrier to inspect a motor vehicle or any equipment used by the motor carrier in transporting passengers ~~for property~~, or property.
 - (2a) To prohibit the use by a motor carrier of any motor vehicle or motor vehicle equipment the Division finds unsafe for use in the transportation of passengers or property on a highway. If an agent of the Division finds a motor vehicle of a motor carrier in actual use upon the highways in the transportation of passengers or property to be unsafe or any parts thereof or any equipment thereon to be unsafe and is of the opinion that further use of such vehicle, parts or equipment are imminently dangerous, the agent may require the operator thereof to discontinue its use and to substitute therefor a safe vehicle, parts or equipment at the earliest possible time and place, having regard for both the convenience and the safety of the passengers or property. When an inspector or agent stops a motor vehicle on the highway, under authority of this section, and the motor vehicle is in operative condition and its further movement is not dangerous to the passengers or property or to the users of the highways, it shall be the duty of the inspector or agent to guide the vehicle to the nearest point of substitution or correction of the defect. Such agents or inspectors shall also have the right to stop any motor vehicle which is being used upon the public highways for the transportation of passengers or property by a motor carrier subject to the provisions of this Article and to eject therefrom any driver or operator who shall be operating or be in charge of such motor vehicle while under the influence of ~~alcoholic beverages, beverages or impairing substances~~. It shall be the duty of all inspectors and agents of the Division to make a written report, upon a form prescribed by the Division, of inspections of all motor equipment and a copy of each such written report, disclosing defects in such equipment, shall be served promptly upon the motor carrier operating the same, either in person by the inspector or agent or by mail. Such agents and inspectors shall also make and serve a similar written report in cases where a motor vehicle is operated in violation of this Chapter or, if the motor vehicle is subject to regulation by the North Carolina Utilities Commission, of Chapter 62 of the General Statutes.
 - (3) To relieve the highways of all undue burdens and safeguard traffic thereon by adopting and enforcing rules and orders designed and calculated to minimize the dangers attending transportation on the highways of all hazardous materials and other commodities."

Section 13. Sections 1 through 12 of this act become effective December 1, 1998. Sections 2.1, 2.2, 2.3, 2.4, 2.5, and 13 are effective when this act becomes law.

In the General Assembly read three times and ratified this the 10th day of September, 1998.

Became law upon approval of the Governor at 9:57 a.m. on the 18th day of September, 1998.

H.B. 1361

SESSION LAW 1998-150

**AN ACT TO REVISE THE MUNICIPAL ANNEXATION LAWS AND
TO CHANGE THE CRITERIA TO BE CONSIDERED BY THE JOINT
LEGISLATIVE COMMISSION ON MUNICIPAL INCORPORATIONS.**

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-277.4(b) reads as rewritten:

"(b) Appraisal at Present-use Value. -- Upon receipt of a properly executed application, the assessor shall appraise the property at its present-use value as established in the schedule prepared pursuant to G.S. 105-317. In appraising the property at its present-use value, the assessor shall appraise the improvements located on qualifying land according to the schedules and standards used in appraising other similar improvements in the county. If all or any part of a qualifying tract of land is located within the limits of an incorporated city or town, or is property annexed subject to G.S. 160A-37(f1) or G.S. 160A-49(f1), the assessor shall furnish a copy of the property record showing both the present-use appraisal and the valuation upon which the property would have been taxed in the absence of this classification to the collector of the city or town. He shall also notify the tax collector of any changes in the appraisals or in the eligibility of the property for the benefit of this classification. Upon a request for a certification pursuant to G.S. 160A-37(f1) or G.S. 160A-49(f1), or any change in the certification, the assessor for the county where the land subject to the annexation is located shall, within 30 days, determine if the land meets the requirements of G.S. 160A-37(f1)(2) or G.S. 160A-49(f1)(2) and report the results of its findings to the city."

Section 2. G.S. 120-166 reads as rewritten:

"§ 120-166. *Additional criteria; nearness to another municipality.*

(a) The Commission may not make a positive recommendation if the proposed municipality is located within one mile of a municipality of 5,000 to 9,999, within three miles of a municipality of 10,000 to 24,999, within four miles of a municipality of 25,000 to 49,999, or within five miles of a municipality of 50,000 or over, according to the most recent decennial federal census, or according to the most recent annual estimate of the Office of State Budget and Management if the municipality was incorporated since the return of that census.

(b) Subsection (a) of this section does not apply in the case of proximity to a specific municipality if:

- (1) The proposed municipality is entirely on an island that the nearby city is not on;

- (2) The proposed municipality is separated by a major river or other natural barrier from the nearby city, such that provision of municipal services by the nearby city to the proposed municipality is infeasible or the cost is prohibitive, and the Commission shall adopt policies to implement this subdivision;
- (3) The ~~nearby municipality~~ municipalities within the distances described in subsection (a) of this section by resolution expresses its express their approval of the incorporation; or
- (4) An area of at least fifty percent (50%) of the proposed municipality has petitioned for annexation to the nearby city under G.S. 160A-31 within the previous 12 months before the incorporation petition is submitted to the Commission but the annexation petition was not approved."

Section 3. Article 20 of Chapter 120 is amended by adding a new section to read:

"§ 120-169.1. Additional criteria; level of development, services.

(a) Level of Development. -- The Commission may not make a positive recommendation unless the entire area proposed for incorporation meets the applicable criteria for development under G.S. 160A-36(c) or G.S. 160A-48(c).

(b) Services. -- The Commission may not make a positive recommendation unless the area to be incorporated submits a plan for providing a reasonable level of municipal services. To meet the requirements of this subsection, the persons submitting the plan for incorporation must propose to provide at least two of the following services:

- (1) Police protection.
- (2) Fire protection.
- (3) Garbage and refuse collection or disposal.
- (4) Water distribution.
- (5) Sewer collection or disposal.
- (6) Street maintenance, construction, or right-of-way acquisition.
- (7) Street lighting.
- (8) Adoption of citywide planning and zoning."

Section 4. G.S. 160A-35 reads as rewritten:

"§ 160A-35. Prerequisites to annexation; ability to serve; report and plans.

A municipality exercising authority under this Part shall make plans for the extension of services to the area proposed to be annexed and shall, prior to the public hearing provided for in G.S. 160A-37, prepare a report setting forth such plans to provide services to such area. The report shall include:

- (1) A map or maps of the municipality and adjacent territory to show the following information:
 - a. The present and proposed boundaries of the municipality.
 - b. The proposed extensions of water mains and sewer outfalls to serve the annexed area, if such utilities are operated by the municipality. The water and sewer map must bear the seal of a registered professional engineer or a licensed surveyor.
- (2) A statement showing that the area to be annexed meets the requirements of G.S. 160A-36.

- (3) A statement setting forth the plans of the municipality for extending to the area to be annexed each major municipal service performed within the municipality at the time of annexation. Specifically, such plans shall:
- a. Provide for extending police protection, fire protection, solid waste collection and street maintenance services to the area to be annexed on the date of annexation on substantially the same basis and in the same manner as such services are provided within the rest of the municipality prior to annexation. A contract with a rural fire department to provide fire protection shall be an acceptable method of providing fire protection. If a water distribution system is not available in the area to be annexed, the plans must call for reasonably effective fire protection services until such time as waterlines are made available in such area under existing municipal policies for the extension of waterlines. A contract with a private firm to provide solid waste collection services shall be an acceptable method of providing solid waste collection services.
 - b. Provide for extension of water mains and sewer lines into the area to be annexed so that property owners in the area to be annexed will be able to secure public water and sewer services according to the policies in effect in such municipality for extending water and sewer lines to individual lots or subdivisions. If the municipality must, at its own expense, extend water and/or sewer mains into the area to be annexed before property owners in the area can, according to municipal policies, make such connection to such lines, then the plans must call for contracts to be let and construction to begin on such lines within one year following the effective date of annexation. In areas where the installation of sewer is not economically feasible due to the unique topography of the area, the municipality may agree to provide septic system maintenance and repair service until such time as sewer service is provided to properties similarly situated.
 - c. Set forth the method under which the municipality plans to finance extension of services into the area to be annexed.
- (4) A statement of the impact of the annexation on any rural fire department providing service in the area to be annexed and a statement of the impact of the annexation on fire protection and fire insurance rates in the area to be annexed, if the area where service is provided is in an insurance district designated under G.S. 153A-233, a rural fire protection district under Article 3A of Chapter 69 of the General Statutes, or a fire service district under Article 16 of Chapter 153A of the General Statutes. The rural fire department shall make available to the city not later than 30 days following a written request from the city all information in its possession or control, including but not limited to operational, financial and budgetary information, necessary for preparation of a statement of impact. The rural fire department forfeits its rights

under G.S. 160A-37.1 and G.S. 160A-37.2 if it fails to make a good faith response within 45 days following receipt of the written request for information from the city, provided that the city's written request so states by specific reference to this section.

- (5) A statement showing how the proposed annexation will affect the city's finances and services, including city revenue change estimates. This statement shall be delivered to the clerk of the board of county commissioners at least 30 days before the date of the public informational meeting on any annexation under this Part."

Section 5. G.S. 160A-35.1 reads as rewritten:

"§ 160A-35.1. *Limitation on change in financial participation prior to annexation.*

~~No~~ For purposes of the extension of water and sewer services required under G.S. 160A-35, no ordinance or policy substantially diminishing the financial participation of a municipality in the construction of water or sewer facilities required under this Article may apply to an area being annexed unless the ordinance or policy became effective at least 180 days prior to the date of adoption by the municipality of the resolution giving notice of intent to consider annexing the area under G.S. 160A-37(a)."

Section 6. G.S. 160A-36 reads as rewritten:

"§ 160A-36. *Character of area to be annexed.*

(a) A municipal governing board may extend the municipal corporate limits to include any area which meets the general standards of subsection (b), and which meets the requirements of subsection (c).

(b) The total area to be annexed must meet the following standards:

- (1) It must be adjacent or contiguous to the municipality's boundaries at the time the annexation proceeding is begun, except if the entire territory of a county water and sewer district created under G.S. 162A-86(b1) is being annexed, the annexation shall also include any noncontiguous pieces of the district as long as the part of the district with the greatest land area is adjacent or contiguous to the municipality's boundaries at the time the annexation proceeding is begun.

- (2) At least one eighth of the aggregate external boundaries of the area must coincide with the municipal boundary.

- (3) No part of the area shall be included within the boundary of another incorporated municipality.

(c) The area to be annexed must be developed for urban ~~purposes~~ purposes at the time of approval of the report provided for in G.S. 160A-35. For purposes of this section, a lot or tract shall not be considered in use for a commercial, industrial, institutional, or governmental purpose if the lot or tract is used only temporarily, occasionally, or on an incidental or insubstantial basis in relation to the size and character of the lot or tract. For purposes of this section, acreage in use for commercial, industrial, institutional, or governmental purposes shall include acreage actually occupied by buildings or other man-made structures together with all areas that are reasonably necessary and appurtenant to such facilities for purposes of parking, storage, ingress and egress, utilities, buffering, and other

ancillary services and facilities. Area of streets and street rights-of-way shall not be used to determine total acreage under this section. An area developed for urban purposes is defined as any as:

- (1) Any area which is so developed that at least sixty percent (60%) of the total number of lots and tracts in the area at the time of annexation are used for residential, commercial, industrial, institutional or governmental purposes, and is subdivided into lots and tracts such that at least sixty percent (60%) of the total acreage, not counting the acreage used at the time of annexation for commercial, industrial, governmental or institutional purposes, consists of lots and tracts ~~five~~ three acres or less in size.
- (2) An area so developed that, at the time of the approval of the annexation report, all tracts in the area to be annexed are used for commercial, industrial, governmental, or institutional purposes.
- (3) ~~An area developed for urban purposes is also the~~ The entire area of any county water and sewer district created under G.S. 162A-86(b1), but this ~~sentence~~ subsection only applies to annexation by a municipality if that:
 - ~~(1) a.~~ a. Municipality has provided in a contract with that district that the area is developed for urban purposes; and
 - ~~(2) b.~~ b. Contract provides for the municipality to operate the sewer system of that county water and sewer district;

provided that the special categorization provided by this ~~sentence~~ subsection only applies if the municipality is annexing in one proceeding the entire territory of the district not already within the corporate limits of a municipality.

(d) In fixing new municipal boundaries, a municipal governing board shall, wherever practical, use natural topographic features such as ridge lines and streams and creeks as boundaries, and may use streets as boundaries. shall use recorded property lines and streets as boundaries. Some or all of the boundaries of a county water and sewer district may also be used when the entire district not already within the corporate limits of a municipality is being annexed.

(e) The area of an abolished water and sewer district shall be considered to be a water and sewer district for the purpose of this section even after its abolition under G.S. 162A-87.2(b)."

Section 7. G.S. 160A-37 reads as rewritten:

"§ 160A-37. Procedure for annexation.

(a) Notice of Intent. -- Any municipal governing board desiring to annex territory under the provisions of this Part shall first pass a resolution stating the intent of the municipality to consider annexation. Such resolution shall describe the boundaries of the area under ~~consideration~~ consideration, fix a date for the public informational meeting, and fix a date for a public hearing on the question of ~~annexation, the~~ annexation. The date for the public informational meeting shall be not less than 45 days and not more than 55 days following passage of the resolution. The date for ~~such~~ the public hearing to be not less than ~~45~~ 60 days and not more than 90 days following passage of the resolution.

(b) Notice of Public Hearing. -- The notice of public hearing shall:

- (1) Fix the date, hour and place of the public informational meeting and the date, hour, and place of the public hearing.
- (2) Describe clearly the boundaries of the area under consideration, and include a legible map of the area.
- (3) State that the report required in G.S. 160A-35 will be available at the office of the municipal clerk at least 30 days prior to the date of the public ~~hearing~~, informational meeting.
- (4) Include an explanation of an owner's rights pursuant to subsection (f1) and (f2) of this section.

Such notice shall be given by publication once a week for at least two successive weeks prior to the date of the ~~hearing~~ informational meeting in a newspaper having general circulation in the municipality and, in addition thereto, if the area to be annexed lies in a county containing less than fifty percent (50%) of the land area of the municipality, in a newspaper having general circulation in the area of proposed annexation. The period from the date of the first publication to the date of the last publication, both dates inclusive, shall be not less than eight days including Sundays, and the date of the last publication shall be not more than seven days preceding the date of public ~~hearing~~, informational meeting. If there be no such newspaper, the municipality shall post the notice in at least five public places within the municipality and at least five public places in the area to be annexed for 30 days prior to the date of public ~~hearing~~, informational meeting. In addition, notice shall be mailed at least four weeks prior to date of the ~~hearing~~ informational meeting, by first class mail, postage prepaid to the owners as shown by the tax records of the county of all freehold interests in real property located within the area to be annexed. The person or persons mailing such notices shall certify to the governing board that fact, and such certificate shall become a part of the record of the annexation proceeding and shall be deemed conclusive in the absence of fraud. If the notice is returned to the city by the postal service by the tenth day before the ~~hearing~~, informational meeting, a copy of the notice shall be sent by certified mail, return receipt requested, at least seven days before the ~~hearing~~, informational meeting. Failure to comply with the mailing requirement of this subsection shall not invalidate the annexation unless it is shown that the requirements were not substantially complied with.

If the governing board by resolution finds that the tax records are not adequate to identify the owners of some or all of the parcels of real property within the area it may in lieu of the mail procedure as to those parcels where the owners could not be so identified, post the notice at least 30 days prior to the date of public ~~hearing~~ informational meeting on all buildings on such parcels, and in at least five other places within the area to be annexed. In any case where notices are placed on property, the person placing the notice shall certify that fact to the governing board.

(c) Action Prior to ~~Hearing~~, Informational Meeting. -- At least 30 days before the date of the public ~~hearing~~, informational meeting, the governing board shall approve the report provided for in G.S. 160A-35, and shall make it available to the public at the office of the municipal clerk. In addition, the municipality may prepare a summary of the full report for public distribution. In addition, the city shall post in the office of the city

clerk at least 30 days before the public ~~hearing~~ informational meeting a legible map of the area to be annexed and a list of the persons holding freehold interests in property in the area to be annexed that it has identified.

(c1) Public Informational Meeting. -- At the public informational meeting a representative of the municipality shall first make an explanation of the report required in G.S. 160A-35. Following such explanation, all persons resident or owning property in the territory described in the notice of public hearing, and all residents of the municipality, shall be given the opportunity to ask questions and receive answers regarding the proposed annexation.

(d) Public Hearing. -- At the public hearing a representative of the municipality shall first make an explanation of the report required in G.S. 160A-35. Following such explanation, all persons resident or owning property in the territory described in the notice of public hearing, and all residents of the municipality, shall be given an opportunity to be heard.

(e) Passage of the Annexation Ordinance. -- The municipal governing board shall take into consideration facts presented at the public hearing and shall have authority to amend the report required by G.S. 160A-35 to make changes in the plans for serving the area proposed to be annexed so long as such changes meet the requirements of G.S. 160A-35. At any regular or special meeting held no sooner than the tenth day following the public hearing and not later than 90 days following such public hearing, the governing board shall have authority to adopt an ordinance extending the corporate limits of the municipality to include all, or such part, of the area described in the notice of public hearing which meets the requirements of G.S. 160A-36 and which the governing board has concluded should be annexed. The ordinance shall:

- (1) Contain specific findings showing that the area to be annexed meets the requirements of G.S. 160A-36. The external boundaries of the area to be annexed shall be described by metes and bounds. In showing the application of G.S. 160A-36(c) and (d) to the area, the governing board may refer to boundaries set forth on a map of the area and incorporate same by reference as a part of the ordinance.
- (2) A statement of the intent of the municipality to provide services to the area being annexed as set forth in the report required by G.S. 160A-35.
- (3) A specific finding that on the effective date of annexation the municipality will have funds appropriated in sufficient amount to finance construction of any water and sewer lines found necessary in the report required by G.S. 160A-35 to extend the basic water and/or sewer system of the municipality into the area to be annexed, or that on the effective date of annexation the municipality will have authority to issue bonds in an amount sufficient to finance such construction. If authority to issue such bonds must be secured from the electorate of the municipality prior to the effective date of annexation, then the effective date of annexation shall be no earlier than the day following the statement of the successful result of the bond election.

- (4) Fix the effective date for annexation. The effective date of annexation may be fixed for any date not less than 40 days nor more than 400 days from the date of passage of the ordinance.

(f) Effect of Annexation Ordinance. -- Except as provided in subsection (f1) of this section, from ~~From~~ and after the effective date of the annexation ordinance, the territory and its citizens and property shall be subject to all debts, laws, ordinances and regulations in force in such municipality and shall be entitled to the same privileges and benefits as other parts of such municipality. Real and personal property in the newly annexed territory on the January 1 immediately preceding the beginning of the fiscal year in which the annexation becomes effective is subject to municipal taxes as provided in G.S. 160A-58.10. If the effective date of annexation falls between June 1 and June 30, and the effective date of the privilege license tax ordinance of the annexing municipality is June 1, then businesses in the area to be annexed shall be liable for taxes imposed in such ordinance from and after the effective date of annexation.

(f1) Property Subject to Present-Use Value Appraisal. -- If an area described in an annexation ordinance includes agricultural land, horticultural land, or forestland that on the effective date of annexation is:

- (1) Land that is being taxed at present-use value pursuant to G.S. 105-277.4; or
- (2) Land that:
 - a. Was on the date of the resolution of intent for annexation being used for actual production and is eligible for present-use value taxation under G.S. 105-277.4, but the land has not been in use for actual production for the required time under G.S. 105-277.3; and
 - b. The assessor for the county where the land subject to annexation is located has certified to the city that the land meets the requirements of this subdivision

the annexation becomes effective as to that property pursuant to subsection (f2) of this section.

(f2) Effective Date of Annexation for Certain Property. -- Annexation of property subject to annexation under subsection (f1) of this section shall become effective:

- (1) Upon the effective date of the annexation ordinance, the property is considered part of the city only (i) for the purpose of establishing city boundaries for additional annexations pursuant to this Article and (ii) for the exercise of city authority pursuant to Article 19 of this Chapter.
- (2) For all other purposes, the annexation becomes effective as to each tract of such property or part thereof on the last day of the month in which that tract or part thereof becomes ineligible for classification pursuant to G.S. 105-227.4 or no longer meets the requirements of subdivision (f1)(2) of this section. Until annexation of a tract or a part of a tract becomes effective pursuant to this subdivision, the tract or part of a tract is not subject to taxation by the city under Article 12 of Chapter 105 of the General

Statutes nor is the tract or part of a tract entitled to services provided by the city.

(g) Simultaneous Annexation Proceedings. -- If a municipality is considering the annexation of two or more areas which are all adjacent to the municipal boundary but are not adjacent to one another, it may undertake simultaneous proceedings under authority of this Part for the annexation of such areas.

(h) Remedies for Failure to Provide Services. -- If, not earlier than one year from the effective date of annexation, and not later than 15 months from the effective date of annexation, any person owning property in the annexed territory shall believe that the municipality has not followed through on its service plans adopted under the provisions of G.S. 160A-35(3) and 160A-37(e), such person may apply for a writ of mandamus under the provisions of Article 40, Chapter 1 of the General Statutes. Relief may be granted by the judge of superior court

- (1) If the municipality has not provided the services set forth in its plan submitted under the provisions of G.S. 160A-35(3)a on substantially the same basis and in the same manner as such services were provided within the rest of the municipality prior to the effective date of annexation, and
- (2) If at the time the writ is sought such services set forth in the plan submitted under the provisions of G.S. 160A-35(3)a are still being provided on substantially the same basis and in the same manner as on the date of annexation of the municipality.

Relief may also be granted by the judge of superior court

- (1) If the plans submitted under the provisions of G.S. 160A-35(3)c require the construction of major trunk water mains and sewer outfall lines and
- (2) If contracts for such construction have not yet been let.

If a writ is issued, costs in the action, including a reasonable attorney's fee for such aggrieved person, shall be charged to the municipality.

(i) No resolution of intent may be adopted under subsection (a) of this section unless the city council (or a planning agency created or designated under either G.S. 160A-361 or the charter) has, by resolution adopted at least one year prior to adoption of the resolution of intent, identified the area as being under consideration for ~~annexation~~; annexation and included a statement in the resolution notifying persons subject to the annexation of their rights under subsections (f1) and (f2) of this section; provided, adoption of such resolution of consideration shall not confer prior jurisdiction over the area as to any other city. The area described under the resolution of intent may comprise a smaller area than that identified by the resolution of consideration. The resolution of consideration may have a metes and bounds description or a map, shall remain effective for two years after adoption, and shall be filed with the city clerk. A new resolution of consideration adopted before expiration of the two-year period for a previously adopted resolution covering the same area shall relate back to the date of the previous resolution.

(j) Subsection (i) of this section shall not apply to the annexation of any area if the resolution of intent describing the area and the ordinance

annexing the area both provide that the effective date of the annexation shall be at least one year from the date of passage of the annexation ordinance.

(k) If a city fails to deliver police protection, fire protection, solid waste or street maintenance services as provided for in G.S. 160A-35(3)a. within 60 days after the effective date of the annexation, the owner of the property may petition the Local Government Commission for abatement of taxes to be paid to the city for taxes that have been levied as of the end of the 60-day period, if the petition is filed not more than 90 days after the expiration of the 60-day period. If the Local Government Commission finds that services were not extended by the end of the 60-day period, it shall enter an order directing the city not to levy any further ad valorem taxes on the property until the fiscal year commencing after extension of the municipal services."

Section 8. G.S. 160A-37.2 reads as rewritten:

"§ 160A-37.2. *Assumption of debt.*

(a) If the city has annexed any area which is served by a rural fire department and which is in an insurance district defined under G.S. 153A-233, a rural fire protection district under Article 3A of Chapter 69 of the General Statutes or a fire service district under Article 17 of Chapter 153A of the General Statutes, then upon the effective date of annexation if the city has not contracted with the rural fire department for fire protection, or when the rural fire department ceases to provide fire protection under contract, then the city shall pay annually a proportionate share of any payments due on any debt (including principal and interest) relating to facilities or equipment of the rural fire department, if the debt was existing at the time of adoption of the resolution of intent, with the payments in the same proportion that the assessed valuation of the area of the district annexed bears to the assessed valuation of the entire district on the date the annexation ordinance becomes ~~effective~~, effective or another date for valuation mutually agreed upon by the city and the fire department.

(b) The city and rural fire department shall jointly present a payment schedule to the Local Government Commission for approval and no payment may be made until such schedule is approved."

Section 9. G.S. 160A-37.3 is amended by adding a new subsection to read:

"(h) A firm which has given notice under subsection (a) of this section that it desires to contract, and any firm that the city believes is eligible to give such notice, shall make available to the city not later than ~~five~~ 10 business days following a written request of the city, sent by certified mail return receipt requested, all information in its possession or control, including but not limited to operational, financial and budgetary information, necessary for the city to determine if the firm qualifies for the benefits of this section and to determine the nature and scope of the potential contract and/or economic loss. The firm forfeits its rights under this section if it fails to make a good faith response within 10 business days following receipt of the written request for information from the city, provided that the city's written request states that statutory rights will be forfeited in the absence of a timely response and includes a specific reference to this section."

Section 10. G.S. 160A-38 reads as rewritten:

"§ 160A-38. *Appeal.*

(a) Within ~~30 days~~ 60 days following the passage of an annexation ordinance under authority of this Part, any person owning property in the annexed territory who shall believe that he will suffer material injury by reason of the failure of the municipal governing board to comply with the procedure set forth in this Part or to meet the requirements set forth in G.S. 160A-36 as they apply to his property may file a petition in the superior court of the county in which the municipality is located seeking review of the action of the governing board.

(b) Such petition shall explicitly state what exceptions are taken to the action of the governing board and what relief the petitioner seeks. Within ~~five days~~ 10 days after the petition is filed with the court, the person seeking review shall serve copies of the petition by registered mail, return receipt requested, upon the municipality.

(c) Within 15 days after receipt of the copy of the petition for review, or within such additional time as the court may allow, the municipality shall transmit to the reviewing court

- (1) A transcript of the portions of the municipal journal or minute book in which the procedure for annexation has been set forth and
- (2) A copy of the report setting forth the plans for extending services to the annexed area as required in G.S. 160A-35.

(d) If two or more petitions for review are submitted to the court, the court may consolidate all such petitions for review at a single hearing, and the municipality shall be required to submit only one set of minutes and one report as required in subsection (c).

(e) At any time before or during the review proceeding, any petitioner or petitioners may apply to the reviewing court for an order staying the operation of the annexation ordinance pending the outcome of the review. The court may grant or deny the stay in its discretion upon such terms as it deems proper, and it may permit annexation of any part of the area described in the ordinance concerning which no question for review has been raised.

(f) The court shall fix the date for review of annexation proceedings under this Chapter, which review date shall preferably be within 30 days following the last day for receiving petitions to the end that review shall be expeditious and without unnecessary delays. The review shall be conducted by the court without a jury. The court may hear oral arguments and receive written briefs, and may take evidence intended to show either

- (1) That the statutory procedure was not followed or
- (2) That the provisions of G.S. 160A-35 were not met, or
- (3) That the provisions of G.S. 160A-36 have not been met.

(g) The court may affirm the action of the governing board without change, or it may

- (1) Remand the ordinance to the municipal governing board for further proceedings if procedural irregularities are found to have materially prejudiced the substantive rights of any of the petitioners.
- (2) Remand the ordinance to the municipal governing board for amendment of the boundaries to conform to the provisions of G.S. 160A-36 if it finds that the provisions of G.S. 160A-36 have not

been met; provided, that the court cannot remand the ordinance to the municipal governing board with directions to add area to the municipality which was not included in the notice of public hearing and not provided for in plans for service.

- (3) Remand the report to the municipal governing board for amendment of the plans for providing services to the end that the provisions of G.S. 160A-35 are satisfied.
- (4) Declare the ordinance null and void, if the court finds that the ordinance cannot be corrected by remand as provided in subdivisions (1), (2), or (3) of this subsection.

If any municipality shall fail to take action in accordance with the court's instructions upon remand within three months from receipt of such instructions, the annexation proceeding shall be deemed null and void.

(h) Any party to the review proceedings, including the municipality, may appeal to the Court of Appeals from the final judgment of the superior court under rules of procedure applicable in other civil cases. The superior court may, with the agreement of the municipality, permit annexation to be effective with respect to any part of the area concerning which no appeal is being made and which can be incorporated into the city without regard to any part of the area concerning which an appeal is being made.

(i) If part or all of the area annexed under the terms of an annexation ordinance is the subject of an appeal to the superior court, Court of Appeals or Supreme Court on the effective date of the ordinance, then the ordinance shall be deemed amended to make the effective date with respect to such area the last day of the next full calendar month following the date of the final judgment of the superior court, Court of Appeals or Supreme Court, whichever is appropriate, or the date the municipal governing board completes action to make the ordinance conform to the court's instructions in the event of remand. For the purposes of this subsection, a denial of a petition for a rehearing or for discretionary review shall be treated as a final judgement.

(j) The provisions of subsection (i) of this section shall apply to any judicial review authorized in whole or in part by G.S. 160A-37.1(i) or G.S. 160A-37.3(g).

(k) In any proceeding related to an annexation ordinance appeal under this section, a city shall not state a claim for lost property tax revenue caused by the appeal. Nothing in this Article shall be construed to mean that as a result of an appeal a municipality may assert a claim for property tax revenue lost during the pendency of the appeal.

(l) Any settlement agreed to by all parties in an appeal under this section may be presented to the superior court in the county in which the municipality is located. If the superior court, in its discretion, approves the settlement, it shall be binding on all parties without the need for approval by the General Assembly."

Section 11. G.S. 160A-42 reads as rewritten:

"§ 160A-42. *Land estimates.*

In determining degree of land subdivision for purposes of meeting the requirements of G.S. 160A-36, the municipality shall use methods calculated to provide reasonably accurate results. In determining whether the

standards set forth in G.S. 160A-36 have been met on appeal to the superior court under G.S. 160A-38, the reviewing court shall accept the estimates of the ~~municipality;~~ municipality as provided in this section unless the actual total area or degree of subdivision falls below the standards in G.S. 160A-36:

- (1) As to total area if the estimate is based on an actual survey, or on county tax maps or records, or on aerial photographs, or on some other reasonably reliable map used for official purposes by a governmental agency unless the petitioners on appeal demonstrate that such estimates are in error in the amount of five percent (5%) or more.
- (2) As to degree of land subdivision, if the estimates are based on an actual survey, or on county tax maps or records, or on aerial photographs, or on some other reasonably reliable source, unless the petitioners on appeal show that such estimates are in error in the amount of five percent (5%) or more."

Section 12. G.S. 160A-47 reads as rewritten:

"§ 160A-47. *Prerequisites to annexation; ability to serve; report and plans.*

A municipality exercising authority under this Part shall make plans for the extension of services to the area proposed to be annexed and shall, prior to the public hearing provided for in G.S. 160A-49, prepare a report setting forth such plans to provide services to such area. The report shall include:

- (1) A map or maps of the municipality and adjacent territory to show the following information:
 - a. The present and proposed boundaries of the municipality.
 - b. The present major trunk water mains and sewer interceptors and outfalls, and the proposed extensions of such mains and outfalls as required in subdivision (3) of this section. The water and sewer map must bear the seal of a registered professional engineer.
 - c. The general land use pattern in the area to be annexed.
- (2) A statement showing that the area to be annexed meets the requirements of G.S. 160A-48.
- (3) A statement setting forth the plans of the municipality for extending to the area to be annexed each major municipal service performed within the municipality at the time of annexation. Specifically, such plans shall:
 - a. Provide for extending police protection, fire protection, solid waste collection and street maintenance services to the area to be annexed on the date of annexation on substantially the same basis and in the same manner as such services are provided within the rest of the municipality prior to annexation. A contract with a rural fire department to provide fire protection shall be an acceptable method of providing fire protection. If a water distribution system is not available in the area to be annexed, the plans must call for reasonably effective fire protection services until such time as waterlines are made available in such area under existing municipal policies for the extension of waterlines. A contract with a private firm to

provide solid waste collection services shall be an acceptable method of providing solid waste collection services.

- b. Provide for extension of major trunk water mains and sewer outfall lines into the area to be annexed so that when such lines are constructed, property owners in the area to be annexed will be able to secure public water and sewer service, according to the policies in effect in such municipality for extending water and sewer lines to individual lots or subdivisions. If requested by the owner of an occupied dwelling unit or an operating commercial or industrial property in writing on a form provided by the municipality, which form acknowledges that such extension or extensions will be made according to the current financial policies of the municipality for making such extensions, and if such form is received by the city clerk ~~not less than 30 days before adoption of the annexation ordinance,~~ no later than five days after the public hearing, provide for extension of water and sewer lines to the property or to a point on a public street or road right-of-way adjacent to the property according to the financial policies in effect in such municipality for extending water and sewer lines. If any such requests are timely made, the municipality shall at the time of adoption of the annexation ordinance amend its report and plan for services to reflect and accommodate such ~~requests,~~ requests, if an amendment is necessary. In areas where the municipality is required to extend sewer service according to its policies, but the installation of sewer is not economically feasible due to the unique topography of the area, the municipality shall provide septic system maintenance and repair service until such time as sewer service is provided to properties similarly situated.
 - c. If extension of major trunk water mains, sewer outfall lines, sewer lines and water lines is necessary, set forth a proposed timetable for construction of such mains, outfalls and lines as soon as possible following the effective date of annexation. In any event, the plans shall call for construction to be completed within two years of the effective date of annexation.
 - d. Set forth the method under which the municipality plans to finance extension of services into the area to be annexed.
- (4) A statement of the impact of the annexation on any rural fire department providing service in the area to be annexed and a statement of the impact of the annexation on fire protection and fire insurance rates in the area to be annexed, if the area where service is provided is in an insurance district designated under G.S. 153A-233, a rural fire protection district under Article 3A of Chapter 69 of the General Statutes, or a fire service district under Article 16 of Chapter 153A of the General Statutes. The rural fire department shall make available to the city not later than 30 days following a written request from the city all information in its possession or control, including but not limited to operational,

financial and budgetary information, necessary for preparation of a statement of impact. The rural fire department forfeits its rights under G.S. 160A-49.1 and G.S. 160A-49.2 if it fails to make a good faith response within 45 days following receipt of the written request for information from the city, provided that the city's written request so states by specific reference to this section.

- (5) A statement showing how the proposed annexation will affect the city's finances and services, including city revenue change estimates. This statement shall be delivered to the clerk of the board of county commissioners at least 30 days before the date of the public informational meeting on any annexation under this Part."

Section 13. G.S. 160A-47.1 reads as rewritten:

"§ 160A-47.1. *Limitation on change in financial participation prior to annexation.*

~~No~~ For purposes of the extension of water and sewer services required under G.S. 160A-47, no ordinance or policy substantially diminishing the financial participation of a municipality in the construction of water or sewer facilities required under this Article may apply to an area being annexed unless the ordinance or policy became effective at least 180 days prior to the date of adoption by the municipality of the resolution giving notice of intent to consider annexing the area under G.S. 160A-49(a)."

Section 14. G.S. 160A-48 reads as rewritten:

"§ 160A-48. *Character of area to be annexed.*

(a) A municipal governing board may extend the municipal corporate limits to include any area

- (1) Which meets the general standards of subsection (b), and
- (2) Every part of which meets the requirements of either subsection (c) or subsection (d).

(b) The total area to be annexed must meet the following standards:

- (1) It must be adjacent or contiguous to the municipality's boundaries at the time the annexation proceeding is begun, except if the entire territory of a county water and sewer district created under G.S. 162A-86(b1) is being annexed, the annexation shall also include any noncontiguous pieces of the district as long as the part of the district with the greatest land area is adjacent or contiguous to the municipality's boundaries at the time the annexation proceeding is begun.
- (2) At least one eighth of the aggregate external boundaries of the area must coincide with the municipal boundary.
- (3) No part of the area shall be included within the boundary of another incorporated municipality.

(c) Part or all of the area to be annexed must be developed for urban ~~purposes.~~ purposes at the time of approval of the report provided for in G.S. 160A-47. Area of streets and street rights-of-way shall not be used to determine total acreage under this section. An area developed for urban purposes is defined as any area which meets any one of the following standards:

- (1) Has a total resident population equal to at least ~~two~~ two and three-tenths persons for each acre of land included within its boundaries; or
 - (2) Has a total resident population equal to at least one person for each acre of land included within its boundaries, and is subdivided into lots and tracts such that at least sixty percent (60%) of the total acreage consists of lots and tracts ~~five~~ three acres or less in size and such that at least sixty-five percent (65%) of the total number of lots and tracts are one acre or less in size; or
 - (3) Is so developed that at least sixty percent (60%) of the total number of lots and tracts in the area at the time of annexation are used for residential, commercial, industrial, institutional or governmental purposes, and is subdivided into lots and tracts such that at least sixty percent (60%) of the total acreage, not counting the acreage used at the time of annexation for commercial, industrial, governmental or institutional purposes, consists of lots and tracts ~~five~~ three acres or less in ~~size, or size.~~ size. For purposes of this section, a lot or tract shall not be considered in use for a commercial, industrial, institutional, or governmental purpose if the lot or tract is used only temporarily, occasionally, or on an incidental or insubstantial basis in relation to the size and character of the lot or tract. For purposes of this section, acreage in use for commercial, industrial, institutional, or governmental purposes shall include acreage actually occupied by buildings or other man-made structures together with all areas that are reasonably necessary and appurtenant to such facilities for purposes of parking, storage, ingress and egress, utilities, buffering, and other ancillary services and facilities; or
 - (4) Is the entire area of any county water and sewer district created under G.S. 162A-86(b1), but this subdivision only applies to annexation by a municipality if that:
 - a. Municipality has provided in a contract with that district that the area is developed for urban purposes; and
 - b. Contract provides for the municipality to operate the sewer system of that county water and sewer district; provided that the special categorization provided by this subdivision only applies if the municipality is annexing in one proceeding the entire territory of the district not already within the corporate limits of a ~~municipality.~~ municipality; or
 - (5) Is so developed that, at the time of the approval of the annexation report, all tracts in the area to be annexed are used for commercial, industrial, governmental, or institutional purposes.
- (d) In addition to areas developed for urban purposes, a governing board may include in the area to be annexed any area which does not meet the requirements of subsection (c) if such area either:
- (1) Lies between the municipal boundary and an area developed for urban purposes so that the area developed for urban purposes is either not adjacent to the municipal boundary or cannot be served

- by the municipality without extending services and/or water and/or sewer lines through such sparsely developed area; or
- (2) Is adjacent, on at least sixty percent (60%) of its external boundary, to any combination of the municipal boundary and the boundary of an area or areas developed for urban purposes as defined in subsection (c).

The purpose of this subsection is to permit municipal governing boards to extend corporate limits to include all nearby areas developed for urban purposes and where necessary to include areas which at the time of annexation are not yet developed for urban purposes but which constitute necessary land connections between the municipality and areas developed for urban purposes or between two or more areas developed for urban purposes. For purposes of this subsection, 'necessary land connection' means an area that does not exceed twenty-five percent (25%) of the total area to be annexed.

(e) ~~In fixing new municipal boundaries, a municipal governing board shall, wherever practical, use natural topographic features such as ridge lines and streams and creeks as boundaries, and may use streets as boundaries.~~ shall use recorded property lines and streets as boundaries. Some or all of the boundaries of a county water and sewer district may also be used when the entire district not already within the corporate limits of a municipality is being annexed.

(f) The area of an abolished water and sewer district shall be considered to be a water and sewer district for the purpose of this section even after its abolition under G.S. 162A-87.2(b)."

Section 15. G.S. 160A-49 reads as rewritten:

"§ 160A-49. *Procedure for annexation.*

(a) Notice of Intent. -- Any municipal governing board desiring to annex territory under the provisions of this Part shall first pass a resolution stating the intent of the municipality to consider annexation. Such resolution shall describe the boundaries of the area under ~~consideration~~ consideration, fix a date for a public informational meeting, and fix a date for a public hearing on the question of annexation, the annexation. The date for the public informational meeting shall be not less than 45 days and not more than 55 days following passage of the resolution. The date for ~~such~~ the public hearing to be not less than 45 60 days and not more than 90 days following passage of the resolution.

(b) Notice of Public Hearing. -- The notice of public hearing shall:

- (1) Fix the date, hour and place of the public informational meeting and the date, hour, and place of the public hearing.
- (2) Describe clearly the boundaries of the area under consideration, and include a legible map of the area.
- (3) State that the report required in G.S. 160A-47 will be available at the office of the municipal clerk at least 30 days prior to the date of the public ~~hearing~~ informational meeting.
- (4) Include a notice of a property owner's rights to request water and sewer service in accordance with G.S. 160A-47.
- (5) Include an explanation of a property owner's rights pursuant to subsections (f1) and (f2) of this section.

Such notice shall be given by publication once a week for at least two successive weeks prior to the date of the hearing informational meeting in a newspaper having general circulation in the municipality and, in addition thereto, if the area to be annexed lies in a county containing less than fifty percent (50%) of the land area of the municipality, in a newspaper having general circulation in the area of proposed annexation. The period from the date of the first publication to the date of the last publication, both dates inclusive, shall be not less than eight days including Sundays, and the date of the last publication shall be not more than seven days preceding the date of public ~~hearing~~ hearing informational meeting. If there be no such newspaper, the municipality shall post the notice in at least five public places within the municipality and at least five public places in the area to be annexed for 30 days prior to the date of public ~~hearing~~ hearing informational meeting. In addition, notice shall be mailed at least four weeks prior to date of the ~~hearing informational meeting~~ by first class mail, postage prepaid to the owners as shown by the tax records of the county of all freehold interests in real property located within the area to be annexed. The person or persons mailing such notices shall certify to the governing board that fact, and such certificate shall become a part of the record of the annexation proceeding and shall be deemed conclusive in the absence of fraud. If the notice is returned to the city by the postal service by the tenth day before the ~~hearing informational meeting~~, a copy of the notice shall be sent by certified mail, return receipt requested, at least seven days before the ~~hearing informational meeting~~. Failure to comply with the mailing requirements of this subsection shall not invalidate the annexation unless it is shown that the requirements were not substantially complied with. If the governing board by resolution finds that the tax records are not adequate to identify the owners of some or all of the parcels of real property within the area it may in lieu of the mail procedure as to those parcels where the owners could not be so identified, post the notice at least 30 days prior to the date of public ~~hearing~~ hearing informational meeting on all buildings on such parcels, and in at least five other places within the area to be annexed. In any case where notices are placed on property, the person placing the notices shall certify that fact to the governing board.

(c) ~~Action Prior to Hearing~~ Informational Meeting. -- At least 30 days before the date of the public ~~hearing~~ hearing informational meeting, the governing board shall approve the report provided for in G.S. 160A-47, and shall make it available to the public at the office of the municipal clerk. In addition, the municipality may prepare a summary of the full report for public distribution. In addition, the city shall post in the office of the city clerk, at least 30 days before the public ~~hearing~~ hearing informational meeting, a legible map of the area to be annexed and a list of persons holding freehold interests in property in the area to be annexed that it has identified.

(cl) Public Informational Meeting. -- At the public informational meeting a representative of the municipality shall first make an explanation of the report required in G.S. 160A-47. Following such explanation, all persons resident or owning property in the territory described in the notice of public hearing, and all residents of the municipality, shall be given the

opportunity to ask questions and receive answers regarding the proposed annexation.

(d) Public Hearing. -- At the public hearing a representative of the municipality shall first make an explanation of the report required in G.S. 160A-47. Following such explanation, all persons resident or owning property in the territory described in the notice of public hearing, and all residents of the municipality, shall be given an opportunity to be heard.

(e) Passage of the Annexation Ordinance. -- The municipal governing board shall take into consideration facts presented at the public hearing and shall have authority to amend the report required by G.S. 160A-47 to make changes in the plans for serving the area proposed to be annexed so long as such changes meet the requirements of G.S. 160A-47, provided that if the annexation report is amended to show additional subsections of G.S. 160A-48(c) or (d) under which the annexation qualifies that were not listed in the original report, the city must hold an additional public hearing on the annexation not less than 30 nor more than 90 days after the date the report is amended, and notice of such new hearing shall be given at the first public hearing. At any regular or special meeting held no sooner than the tenth day following the public hearing and not later than 90 days following such public hearing, the governing board shall have authority to adopt an ordinance extending the corporate limits of the municipality to include all, or such part, of the area described in the notice of public hearing which meets the requirements of G.S. 160A-48 and which the governing board has concluded should be annexed. The ordinance shall:

- (1) Contain specific findings showing that the area to be annexed meets the requirements of G.S. 160A-48. The external boundaries of the area to be annexed shall be described by metes and bounds. In showing the application of G.S. 160A-48(c) and (d) to the area, the governing board may refer to boundaries set forth on a map of the area and incorporate same by reference as a part of the ordinance.
- (2) A statement of the intent of the municipality to provide services to the area being annexed as set forth in the report required by G.S. 160A-47.
- (3) A specific finding that on the effective date of annexation the municipality will have funds appropriated in sufficient amount to finance construction of any major trunk water mains and sewer outfalls and such water and sewer lines as required in G.S. 160A-47(3)(b) found necessary in the report required by G.S. 160A-47 to extend the basic water and/or sewer system of the municipality into the area to be annexed, or that on the effective date of annexation the municipality will have authority to issue bonds in an amount sufficient to finance such construction. If authority to issue such bonds must be secured from the electorate of the municipality prior to the effective date of annexation, then the effective date of annexation shall be no earlier than the day following the statement of the successful result of the bond election.

- (4) Fix the effective date for annexation. The effective date of annexation may be fixed for any date not less than ~~40 days~~ 70 days nor more than 400 days from the date of passage of the ordinance.

(f) Effect of Annexation Ordinance. -- Except as provided in subsection (f1) of this section, from ~~From~~ and after the effective date of the annexation ordinance, the (f) Effect of Annexation Ordinance. -- From and after the effective date of the annexation ordinance, the territory and its citizens and property shall be subject to all debts, laws, ordinances and regulations in force in such municipality and shall be entitled to the same privileges and benefits as other parts of such municipality. Real and personal property in the newly annexed territory on the January 1 immediately preceding the beginning of the fiscal year in which the annexation becomes effective is subject to municipal taxes as provided in G.S. 160A-58.10. Provided that annexed property which is a part of a sanitary district, which has installed water and sewer lines, paid for by the residents of said district, shall not be subject to that part of the municipal taxes levied for debt service for the first five years after the effective date of annexation. If this proviso should be declared by a court of competent jurisdiction to be in violation of any provision of the federal or State Constitution, the same shall not affect the remaining provisions of this Part. If the effective date of annexation falls between June 1 and June 30, and the effective date of the privilege license tax ordinance of the annexing municipality is June 1, then businesses in the area to be annexed shall be liable for taxes imposed in such ordinances from and after the effective date of annexation.

(f1) Property Subject to Present-Use Value Appraisal. -- If an area described in an annexation ordinance includes agricultural land, horticultural land, or forestland that on the effective date of annexation is:

- (1) Land that is being taxed at present-use value pursuant to G.S. 105-277.4; or
- (2) Land that:
 - a. Was on the date of the resolution of intent for annexation being used for actual production and is eligible for present-use value taxation under G.S. 105-277.4, but the land has not been in use for actual production for the required time under G.S. 105-277.3; and
 - b. The assessor for the county where the land subject to annexation is located has certified to the city that the land meets the requirements of this subdivision

the annexation becomes effective as to that property pursuant to subsection (f2) of this section.

(f2) Effective Date of Annexation for Certain Property. -- Annexation of property subject to annexation under subsection (f1) of this section shall become effective:

- (1) Upon the effective date of the annexation ordinance, the property is considered part of the city only (i) for the purpose of establishing city boundaries for additional annexations pursuant to this Article and (ii) for the exercise of city authority pursuant to Article 19 of this Chapter.

- (2) For all other purposes, the annexation becomes effective as to each tract of such property or part thereof on the last day of the month in which that tract or part thereof becomes ineligible for classification pursuant to G.S. 105-227.4 or no longer meets the requirements of subdivision (f1)(2) of this section. Until annexation of a tract or a part of a tract becomes effective pursuant to this subdivision, the tract or part of a tract is not subject to taxation by the city under Article 12 of Chapter 105 of the General Statutes nor is the tract or part of a tract entitled to services provided by the city.

(g) Simultaneous Annexation Proceedings. -- If a municipality is considering the annexation of two or more areas which are all adjacent to the municipal boundary but are not adjacent to one another, it may undertake simultaneous proceedings under authority of this Part for the annexation of such areas.

(h) Remedies for Failure to Provide Services. -- If, not earlier than one year from the effective date of annexation, and not later than 15 months from the effective date of annexation, any person owning property in the annexed territory shall believe that the municipality has not followed through on its service plans adopted under the provisions of G.S. 160A-47(3) and 160A-49(e), for any required service other than water and sewer services such person may apply for a writ of mandamus under the provisions of Article 40, Chapter 1 of the General Statutes. Relief may be granted by the judge of superior court

- (1) If the municipality has not provided the services set forth in its plan submitted under the provisions of G.S. 160A-47(3)a on substantially the same basis and in the same manner as such services were provided within the rest of the municipality prior to the effective date of annexation, and
- (2) If at the time the writ is sought such services set forth in the plan submitted under the provisions of G.S. 160A-47(3)a are still being provided on substantially the same basis and in the same manner as on the date of annexation of the municipality.

If, not earlier than 24 months from the effective date of the annexation, and not later than 27 months from the effective date of the annexation, any person owning property in the annexed area can show that the plans submitted under the provisions of G.S. 160A-47(3)c require the construction of major trunk water mains and sewer outfall lines and if construction has not been completed within two years of the effective date of the annexation, relief may also be granted by the superior court by an order to the municipality to complete such lines and outfalls within a certain time. Similar relief may be granted by the superior court to any owner of property who made a timely request for a water or sewer line, or both, pursuant to G.S. 160A-47(3)b and such lines have not been completed within two years from the effective date of annexation in accordance with applicable city policies and through no fault of the owner, if such owner petitions for such relief not earlier than 24 months following the effective date of annexation and not later than 27 months following the effective date of annexation.

If a writ is issued, costs in the action, including a reasonable attorney's fee for such aggrieved person, shall be charged to the municipality.

(i) No resolution of intent may be adopted under subsection (a) of this section unless the city council (or planning agency created or designated under either G.S. 160A-361 or the charter) has, by resolution adopted at least one year prior to adoption of the resolution of intent, identified the area as being under consideration for ~~annexation~~; annexation and included a statement in the resolution notifying persons subject to the annexation of their rights under subsections (f1) and (f2) of this section; provided, adoption of such resolution of consideration shall not confer prior jurisdiction over the area as to any other city. The area described under the resolution of intent may comprise a smaller area than that identified by the resolution of consideration. The resolution of consideration may have a metes and bounds description or a map and shall remain effective for two years after adoption, and shall be filed with the city clerk. A new resolution of consideration adopted before expiration of the two-year period for a previously adopted resolution covering the same area shall relate back to the date of the previous resolution.

(j) Subsection (i) of this section shall not apply to the annexation of any area if the resolution of intent describing the area and the ordinance annexing the area both provide that the effective date of the annexation shall be at least one year from the date of passage of the annexation ordinance.

(k) If a valid request for extension of a water or sewer line has been made under G.S. 160A-47(3)b, and the extension is not complete at the end of two years after the effective date of the annexation ordinance, the owner of the property may petition the Local Government Commission for abatement of taxes to be paid to the city which have not been levied as of the expiration date of the two-year period, if such petition is filed not more than 60 days after the expiration of the two-year period. If the Local Government Commission finds that the extension to the property was not complete by the end of the two-year period, it shall enter an order directing the city not to levy any further ad valorem taxes on the property until the fiscal year commencing after completion of the extension. In addition, if the Local Government Commission found that the extension to the property was not completed by the end of the two-year period, and if it finds that for any fiscal year during the period beginning with the first day of the fiscal year in which the annexation ordinance became effective and ending the last day of the fiscal year in which the two-year period expired, the city made an appropriation for construction, operation or maintenance of a water or sewer system (other than payments the city made as a customer of the system) from the fund or funds for which ad valorem taxes are levied, then the Local Government Commission shall order the city to release or refund an amount of the petitioner's property taxes for that year in question in proportion to the percentage of appropriations in the fund made for water and sewer services. By way of illustration, if a net amount of one hundred thousand dollars (\$100,000) was appropriated for water or sewer construction, operation or maintenance from a fund which had total expenditures of ten million dollars (\$10,000,000) and the petitioner's tax levy was one thousand

dollars (\$1,000), the amount of release or refund shall be ten dollars (\$10.00).

(l) If a city fails to deliver police protection, fire protection, solid waste or street maintenance services as provided for in G.S. 160A-47(3)a. within 60 days after the effective date of the annexation, the owner of the property may petition the Local Government Commission for abatement of taxes to be paid to the city for taxes that have been levied as of the end of the 60-day period, if the petition is filed not more than 90 days after the expiration of the 60-day period. If the Local Government Commission finds that services were not extended by the end of the 60-day period, it shall enter an order directing the city not to levy any further ad valorem taxes on the property until the fiscal year commencing after extension of the municipal services."

Section 16. G.S. 160A-49.2 reads as rewritten:

"§ 160A-49.2. Assumption of debt.

(a) If the city has annexed any area which is served by a rural fire department and which is in an insurance district defined under G.S. 153A-233, a rural fire protection district under Article 3A of Chapter 69 of the General Statutes or a fire service district under Article 16 of Chapter 153A of the General Statutes, then upon the effective date of annexation if the city has not contracted with the rural fire department for fire protection, or when the rural fire department ceases to provide fire protection under contract, then the city shall pay annually a proportionate share of any payments due on any debt (including principal and interest) relating to facilities or equipment of the rural fire department, if the debt was existing at the time of adoption of the resolution of intent, with the payments in the same proportion that the assessed valuation of the area of the district annexed bears to the assessed valuation of the entire district on the date the annexation ordinance becomes ~~effective~~, effective or another date for valuation mutually agreed upon by the city and the fire department.

(b) The city and rural fire department shall jointly present a payment schedule to the Local Government Commission for approval and no payment may be made until such schedule is approved."

Section 17. G.S. 160A-49.3(h) reads as rewritten:

"(h) A firm which has given notice under subsection (a) of this section that it desires to contract, and any firm that the city believes is eligible to give such notice, shall make available to the city not later than ~~five~~ 10 business days following a written request of the ~~city~~ city, sent by certified mail return receipt requested, all information in its possession or control, including but not limited to operational, financial and budgetary information, necessary for the city to determine if the firm qualifies for the benefits of this section and to determine the nature and scope of the potential contract and/or economic loss. The firm forfeits its rights under this section if it fails to make a good faith response within 10 business days following receipt of the written request for information from the city, provided that the city's written request so states by specific reference to this section."

Section 18. G.S. 160A-50 reads as rewritten:

"§ 160A-50. Appeal.

(a) Within ~~30 days~~ 60 days following the passage of an annexation ordinance under authority of this Part, any person owning property in the

annexed territory who shall believe that he will suffer material injury by reason of the failure of the municipal governing board to comply with the procedure set forth in this Part or to meet the requirements set forth in G.S. 160A-48 as they apply to his property may file a petition in the superior court of the county in which the municipality is located seeking review of the action of the governing board.

(b) Such petition shall explicitly state what exceptions are taken to the action of the governing board and what relief the petitioner seeks. Within ~~five days~~ 10 days after the petition is filed with the court, the person seeking review shall serve copies of the petition by registered mail, return receipt requested, upon the municipality.

(c) Within 15 days after receipt of the copy of the petition for review, or within such additional time as the court may allow, the municipality shall transmit to the reviewing court

(1) A transcript of the portions of the municipal journal or minute book in which the procedure for annexation has been set forth and

(2) A copy of the report setting forth the plans for extending services to the annexed area as required in G.S. 160A-47.

(d) If two or more petitions for review are submitted to the court, the court may consolidate all such petitions for review at a single hearing, and the municipality shall be required to submit only one set of minutes and one report as required in subsection (c).

(e) At any time before or during the review proceeding, any petitioner or petitioners may apply to the reviewing court for an order staying the operation of the annexation ordinance pending the outcome of the review. The court may grant or deny the stay in its discretion upon such terms as it deems proper, and it may permit annexation of any part of the area described in the ordinance concerning which no question for review has been raised.

(f) The court shall fix the date for review of annexation proceedings under this Part, which review date shall preferably be within 30 days following the last day for receiving petitions to the end that review shall be expeditious and without unnecessary delays. The review shall be conducted by the court without a jury. The court may hear oral arguments and receive written briefs, and may take evidence intended to show either

(1) That the statutory procedure was not followed, or

(2) That the provisions of G.S. 160A-47 were not met, or

(3) That the provisions of G.S. 160A-48 have not been met.

(g) The court may affirm the action of the governing board without change, or it may

(1) Remand the ordinance to the municipal governing board for further proceedings if procedural irregularities are found to have materially prejudiced the substantive rights of any of the petitioners.

(2) Remand the ordinance to the municipal governing board for amendment of the boundaries to conform to the provisions of G.S. 160A-48 if it finds that the provisions of G.S. 160A-48 have not been met; provided, that the court cannot remand the ordinance to the municipal governing board with directions to add area to the

municipality which was not included in the notice of public hearing and not provided for in plans for service.

- (3) Remand the report to the municipal governing board for amendment of the plans for providing services to the end that the provisions of G.S. 160A-47 are satisfied.
- (4) Declare the ordinance null and void, if the court finds that the ordinance cannot be corrected by remand as provided in subdivisions (1), (2), or (3) of this subsection.

If any municipality shall fail to take action in accordance with the court's instructions upon remand within three months from receipt of such instructions, the annexation proceeding shall be deemed null and void.

(h) Any party to the review proceedings, including the municipality, may appeal to the Court of Appeals from the final judgment of the superior court under rules of procedure applicable in other civil cases. The superior court may, with the agreement of the municipality, permit annexation to be effective with respect to any part of the area concerning which no appeal is being made and which can be incorporated into the city without regard to any part of the area concerning which an appeal is being made.

(i) If part or all of the area annexed under the terms of an annexation ordinance is the subject of an appeal to the superior court, Court of Appeals or Supreme Court on the effective date of the ordinance, then the ordinance shall be deemed amended to make the effective date with respect to such area the last day of the next full calendar month following the date of the final judgment of the superior court or appellate division, whichever is appropriate, or the date the municipal governing board completes action to make the ordinance conform to the court's instructions in the event of remand. For the purposes of this subsection, a denial of a petition for rehearing or for discretionary review shall be treated as a final judgement.

(j) If a petition for review is filed under subsection (a) of this section or an appeal is filed under G.S. 160A-49.1(g) or G.S. 160A-49.3(g), and a stay is granted, then the time periods of two years, 24 months or 27 months provided in G.S. 160A-47(3)c, 160A-49(h), or 160A-49(j) are each extended by the lesser of the length of the stay or one year for that annexation.

(k) The provisions of subsection (i) of this section shall apply to any judicial review authorized in whole or in part by G.S. 160A-49.1(i) or G.S. 160A-49.3(g).

(l) In any proceeding related to an annexation ordinance appeal under this section, a city shall not state a claim for lost property tax revenue caused by the appeal. Nothing in this Article shall be construed to mean that as a result of an appeal a municipality may assert a claim for property tax revenue lost during the pendency of the appeal.

(m) Any settlement reached by all parties in an appeal under this section may be presented to the superior court in the county in which the municipality is located. If the superior court, in its discretion, approves the settlement, it shall be binding on all parties without the need for approval by the General Assembly."

Section 19. G.S. 160A-54 reads as rewritten:

"§ 160A-54. *Population and land estimates.*

In determining population and degree of land subdivision for purposes of meeting the requirements of G.S. 160A-48, the municipality shall use methods calculated to provide reasonably accurate results. In determining whether the standards set forth in G.S. 160A-48 have been met on appeal to the superior court under G.S. 160A-50, the reviewing court shall accept the estimates of the ~~municipality~~ municipality unless the actual population, total area, or degree of land subdivision falls below the standards in G.S. 160A-48:

- (1) As to population, if the estimate is based on the number of dwelling units in the area multiplied by the average family size in such area, or in the township or townships of which such area is a part, as determined by the last preceding federal decennial census; or if it is based on a new enumeration carried out under reasonable rules and regulations by the annexing municipality; provided, that the court shall not accept such estimates if the petitioners demonstrate that such estimates are in error in the amount of ten percent (10%) or more.
- (2) As to total area if the estimate is based on an actual survey, or on county tax maps or records, or on aerial photographs, or on some other reasonably reliable map used for official purposes by a governmental agency, unless the petitioners on appeal demonstrate that such estimates are in error in the amount of five percent (5%) or more.
- (3) As to degree of land subdivision, if the estimates are based on an actual survey, or on county tax maps or records, or on aerial photographs, or on some other reasonably reliable source, unless the petitioners on appeal show that such estimates are in error in the amount of five percent (5%) or more."

Section 20. This act becomes effective November 1, 1998, and applies to annexations for which the resolution of intent is adopted on or after that date. Sections 2 and 3 shall not apply to any incorporation proposal originally presented to the Joint Legislative Commission on Municipal Incorporations prior to the effective date.

In the General Assembly read three times and ratified this the 14th day of September, 1998.

Became law upon approval of the Governor at 12:00 noon on the 22nd day of September, 1998.

S.B. 1263

SESSION LAW 1998-151

AN ACT TO REVIVE THE CHARTER OF THE TOWN OF UNIONVILLE AND TO REVIVE THE CHARTER OF THE TOWN OF WOODLAWN.

The General Assembly of North Carolina enacts:

Section 1. Section 3 of Chapter 62 of the Private Laws of 1911 reads as rewritten:

"Section 3. That the elected officers of ~~said~~ the town shall consist of a ~~mayor, mayor and~~ five commissioners, ~~a constable, a secretary and~~

~~treasurer, and the following persons shall fill the offices until the regular election in May, one thousand nine hundred and eleven, viz: Mayor, J. B. Little; commissioners, A. A. Secrest, T. L. A. Helms, J. T. Price, Dr. A. D. N. Whitley and C. D. Benton, all of which offices shall be filled by election of popular vote, except constable, secretary and treasurer, who shall be chosen by commissioners of said town. The constable and treasurer shall give bond in such sum as the commissioners shall determine for the faithful performance of the duties of their respective offices. November of 1999: Mayor, Larry B. Simpson; commissioners, Kenneth J. Price, Jimmy Lee Baucom, Kenneth M. Brown, Jr., Robert L. Crouch, and Randy Keith Baucom."~~

Section 2. Section 4 of Chapter 62 of the Private Laws of 1911 reads as rewritten:

"Section 4. That officers and their successors shall be elected under ~~the laws of chapter seventy three of The Revisal of one thousand nine hundred and five, relating to elections,~~ Chapter 160A and Chapter 163 of the General Statutes and shall hold their offices for the four-year terms prescribed under the general law."

Section 3. Sections 5 and 6 of Chapter 62 of the Private Laws of 1911 are repealed.

Section 4. Section 7 of Chapter 62 of the Private Laws of 1911 reads as rewritten:

"Section 7. Said commissioners shall have and are hereby vested with all the powers conferred upon commissioners of towns and cities and subject to the performance of all the duties as such, conferred under the general laws. ~~laws of chapter seventy three of The Revisal of one thousand nine hundred five."~~

Section 5. Chapter 62 of the Private Laws of 1911 is amended by adding a new section to read:

Section 5.1. The Town of Unionville operates under the Mayor-Council Plan as provided by Part 3 of Article 7 of Chapter 160A of the General Statutes.

Section 5.2. Section 2 of Chapter 62 of the Private Laws of 1911 is rewritten to read:

"Section 2. The boundaries of the Town of Unionville are as follows:

BEGINNING at the intersection of Friendly Baptist Church Road and Ridge Road; thence along and with Ridge Road in a generally southeast direction to the intersection of Ridge Road and U.S. Highway 601; thence with U.S. Highway 601 in a generally southwest direction approximately 400 feet to the southwest corner of parcel 9-174-12B; thence along and with the southern boundaries of the following properties: parcels 9-174-6G; 9-174-10; 9-174-6D; Country Ridge and Country Ridge, Sec. 2 as shown on plats recorded in Plat Cabinet B, Files 109A and 111A in the Office of the Union County Register of Deeds; the minor subdivision of Kelly Helms and wife, Pauline Helms as shown on plat recorded in Plat Cabinet B, File 343A in the Office of the Union County Register of Deeds; thence with the eastern boundary of parcel 9-177-75 in a generally northerly direction to a point in the centerline of Baucom-Deese Road; thence with Baucom-Deese Road in a generally easterly direction to the intersection of Baucom-Deese Road with

Morgan Mill Road; thence with Morgan Mill Road in a generally northeast direction to the intersection of Morgan Mill Road with Henry Baucom Road; thence extending past said intersection and running with the centerline of said road approximately 701 feet; thence in a generally northwesterly direction with the line of parcel 8-072-19 to said parcel's northernmost boundary line; thence with the northernmost boundary lines of the following properties: 8-072-19, 8-072-25A, and 8-072-25; thence generally north with the property lines of parcel 8-072-9 to the northernmost line of parcel 8-072-9; thence with the northernmost property lines of parcels 9, 9A, and 8B; thence in a generally southerly direction along and with the westernmost property lines of parcels 8-072-8B, 8-072-8D, and 8-072-8A to the centerline of Henry Baucom Road; thence with the centerline of said Road in a generally westerly direction to the intersection of Henry Baucom Road with Haigler-Baucom Road; thence with Haigler-Baucom Road in a generally northwest direction to the intersection of Haigler-Baucom Road with Sikes Mill Road; thence with Sikes Mill Road in a generally northerly direction to the intersection of Sikes Mill Road with Clontz-Long Road; thence in a generally westerly direction with Clontz-Long Road to the intersection of Clontz-Long Road with U.S. Highway 601; thence with U.S. Highway 601 in a generally southerly direction to the intersection of U.S. Highway 601 and Lawyers Road; thence with Lawyers Road in a generally westerly direction to the intersection of Lawyers Road and Friendly Baptist church Road; thence along and with Friendly Baptist Church Road to the point and place of the BEGINNING."

Section 6. (a) From and after the effective date of this act, the citizens and property in the Town of Unionville shall be subject to municipal taxes levied for the year beginning July 1, 1998, and for that purpose the Town shall obtain from Union County a record of property in the area herein incorporated which was listed for taxes as of January 1, 1998; and the businesses in the Town shall be liable for privilege license tax from the effective date of the privilege license tax ordinance.

(b) The Town may adopt a budget ordinance for fiscal year 1998-99 without following the timetable in the Local Government Budget and Fiscal Control Act, but shall follow the sequence of actions in the spirit of the act insofar as is practical. For fiscal year 1998-99, ad valorem taxes may be paid at par or face amount within 90 days of adoption of the budget ordinance, and thereafter in accordance with the schedule in G.S. 105-360 as if the taxes had been due and payable on September 1, 1998.

Section 7. On the date of the general election in 1998, the Union County Board of Elections shall conduct a special election for the purpose of submission to the qualified voters of the area described in Chapter 62 of the Private Laws of 1911, the question of whether or not the charter of the Town shall be revived.

Section 8. In the election, the question on the ballot shall be:

"[]FOR []AGAINST

Revival of the Charter of the Town of Unionville".

Section 9. In the election, if a majority of the votes are cast "For the Revival of the Charter of the Town of Unionville", Sections 1 through 6 of this act become effective on the date that the Union County Board of

Elections certifies the results of the election. Otherwise, Sections 1 through 6 of this act have no force and effect.

Section 9.1. A Charter for the Town of Woodlawn is enacted as follows:

"CHARTER OF TOWN OF WOODLAWN.

"CHAPTER I.

"INCORPORATION AND CORPORATE POWERS.

"Section 1.1. **Incorporation and corporate powers.** The inhabitants of the Town of Woodlawn are a body corporate and politic under the name 'The Town of Woodlawn'. Under that name they have all the powers, duties, rights, privileges, and immunities conferred and imposed upon cities by the general law of North Carolina.

"CHAPTER II.

"CORPORATE BOUNDARIES.

"Section 2.1. **Town boundaries.** (a) Until modified in accordance with law, the boundaries of the Town of Woodlawn are as follows:

The incorporated Town of Woodlawn shall consist of the tracts of land in the Melville Township of Alamance County, generally described as those properties between US 70, NC 119, White Level Road, Bason Road, and described more specifically as:

Beginning at the intersection of NC Hwy 119 & White Level Road and running North along the Eastern boundaries of the following property:

<u>Tax Map</u>	<u>Lot Number</u>
10-1	50

The boundary proceeds West along the Northern boundaries of the following properties:

<u>Tax Map</u>	<u>Lot Number</u>
10-2	50
10-1	47
10-1	47B
10-2	5
10-2	3
10-2	2

The boundary proceeds West across Quaker Creek Reservoir and continues West along the Northern boundaries of the following properties:

<u>Tax Map</u>	<u>Lot Number</u>
13-25	12D
13-25	12E

The boundary crosses Miles Chapel Road and continues West along the Northern boundary of the following property:

<u>Tax Map</u>	<u>Lot Number</u>
13-24	34

The boundary turns South and continues along the Eastern edge of Quaker Creek Reservoir and the Western boundaries of the following properties:

<u>Tax Map</u>	<u>Lot Number</u>
13-24	34
13-24	78
13-24	48

13-24	34A
13-24	33
13-24	51

The boundary continues 100' along the Northern edge of property 13-22/35A. The boundary then crosses Mebane-Rogers Road (SR 1921) and continues South along the Western boundaries of the following properties:

<u>Tax Map</u>	<u>Lot Number</u>
13-22	35A
13-22	35E
13-22	35B
13-22	35C
13-22	41
13-22	59
13-22	58
13-22	57
13-22	31
13-22	36
13-22	30
13-22	30G
13-22	30H
13-22	40
13-22	54

The boundary crosses Dodson Road (SR 1927) and continues South along the Western boundaries of the following properties:

<u>Tax Map</u>	<u>Lot Number</u>
13-22	30F
13-22	4

The boundary turns East and follows the Southern boundaries of the following properties:

<u>Tax Map</u>	<u>Lot Number</u>
13-22	4
13-22	30F
13-22	30D

The boundary turns Southeast at the Southeast corner of Lot 13-22/30D and continues across Quaker Creek Reservoir to the Northern tip of Lot 10-2/95. The boundary proceeds South along the western boundaries of the following properties:

<u>Tax Map</u>	<u>Lot Number</u>
10-2	95
10-2	34M

The boundary turns East along the Southern boundary of Lot 10-2/34M. The boundary turns South and follows the Western boundaries of the following properties:

<u>Tax Map</u>	<u>Lot Number</u>
10-2	34F
10-2	34G
10-2	34A
10-2	34E

The boundary now turns East and follows the Southern boundaries of the following properties:

<u>Tax Map</u>	<u>Lot Number</u>
10-2	34E
10-2	34D
10-2	34C
10-2	33
10-2	29
10-2	94
10-2	93
10-2	92
10-2	90
10-2	89
10-2	88
10-2	87
10-2	109
10-2	108
10-2	107

The boundary turns South and follows the Western boundaries of the following properties:

<u>Tax Map</u>	<u>Lot Number</u>
10-2	107
10-2	104
10-2	103
10-4	71A

The boundary turns East and follows the Southern boundaries of the following properties:

<u>Tax Map</u>	<u>Lot Number</u>
10-4	71A
10-4	89
10-4	72A

The boundary turns South and follows the Western boundary of Lot 10-5/22. The boundary then intersects with US 70 turning East and proceeding along the Southern boundaries of the following properties:

<u>Tax Map</u>	<u>Lot Number</u>
10-5	22
10-5	28
10-5	24A
10-5	24
10-5	25
10-5	26
10-5	26B
10-5	27
10-5	55
10-5	28
10-5	29
10-6	2
10-6	3
10-6	4

10-6	30
10-6	5

The boundary turns North and proceeds along the Eastern boundaries of the following properties:

<u>Tax Map</u>	<u>Lot Number</u>
10-6	5
10-6	4

The boundary turns Northeast and follows the Southern boundary of Lot 10-6/8. The boundary turns North and continues along the Eastern boundary of the following properties:

<u>Tax Map</u>	<u>Lot Number</u>
10-6	7E
10-6	7A
10-6	7B
10-6	7C
10-6	7
10-6	6
10-6	20
10-6	21

The boundary crosses Mebane-Rogers Road and turns right proceeding East along the Southern boundary of Lot 10-1/43. The boundary turns North and continues along the Eastern boundaries of the following properties:

<u>Tax Map</u>	<u>Lot Number</u>
10-1	43
10-1	28
10-1	29
10-1	30

The boundary crosses White-Level Road and returns to the BEGINNING point.

The described boundary includes some 2,300 acres more or less. The footage in this description is taken from approximations based on the Alamance County tax maps for the Haw River & Melville Townships.

"CHAPTER III.

"GOVERNING BODY.

"Section 3.1. **Structure of governing body; number of members.** The governing body of the Town of Woodlawn is the Town Council, which has five members.

"Section 3.2. **Manner of electing Council.** The qualified voters of the entire Town elect the members of the Council.

"Section 3.3. **Term of office of Council members.** Members of the Town Council are elected to four-year terms, except at the initial elections in 1999 when the three highest vote getters who are elected shall be elected to four-year terms and the next two highest vote getters shall be elected to two-year terms. In 2001 and quadrennially thereafter, two members of the Council shall be elected for four-year terms. In 2003 and quadrennially thereafter, three members of the Council shall be elected for four-year terms.

"Section 3.4. **Selection of Mayor; term of office.** At the organizational meeting of the interim Council and at the organizational meeting after each election, the Council shall elect one of its members to serve as Mayor at its pleasure. The Mayor has the right to vote on all matters before the Council.

**"CHAPTER IV.
"ELECTIONS.**

"Section 4.1. **Conduct of Town elections.** The Town Council shall be elected on a nonpartisan basis. Elections shall be conducted in accordance with Chapter 163 of the General Statutes.

"Section 4.2. **Determination of election results.** The results shall be determined by the plurality method in accordance with G.S. 163-292.

**"CHAPTER V.
"ADMINISTRATION.**

"Section 5.1. **Mayor-Council plan.** The Town of Woodlawn operates under the Mayor-Council plan as provided by Part 3 of Article 7 of Chapter 160A of the General Statutes.

"Section 5.2. **Administration of budget.** The Town may adopt a budget ordinance for fiscal year 1998-1999 without following the timetable in the Local Government Budget and Fiscal Control Act, but shall follow the sequence of actions in the spirit of the act insofar as is practical.

"Section 5.3. **Interim governing board.** Until members of the Town Council are elected in 1999 in accordance with the Town Charter and the general law of North Carolina, Mike Baptiste, L. Joy Albright, Andy Corbett, Bob Eudy, and Audrey McBane shall serve as members of the Town Council. The initial meeting of the Town Council shall be called by the Clerk to the Board of Commissioners of Alamance County.

"Section 5.4. **Eligibility for State funds.** The Town of Woodlawn is eligible to receive distributions of State funds during fiscal year 1998-1999."

Section 9.2. Chapter 348 of the Public-Local Laws of 1939 is repealed. Any property of Woodlawn Community, Incorporated, under that act shall vest by operation of law in the Town of Woodlawn.

Section 9.3. On the date of the general election in 1998, the Alamance County Board of Elections shall conduct a special election for the purpose of submission to the qualified voters of the area described in Section 2.1 of the Charter of the Town of Woodlawn, the question of whether such area shall be incorporated as the Town of Woodlawn.

Section 9.4. In the election, the question on the ballot shall be:

"[]FOR []AGAINST

Revival of the Charter of the Town of Woodlawn".

Section 9.5. In the election, if a majority of the votes are cast "For the Revival of the Charter of the Town of Woodlawn", Sections 9.1 through 9.2 of this act become effective on the date that the Alamance County Board of Elections certifies the results of the election. Otherwise, Sections 9.1 through 9.2 of this act have no force and effect.

Section 9.5A. Section 3.4 of Ratified Senate Bill 1514, 1997 Regular Session, is amended by deleting "Revival of the Charter", and substituting "Incorporation".

Section 9.6. The General Assembly finds that the short period of time between the enactment of this act and the date of the 1998 general election when the two referenda under this act are to be held require modification of the general law election procedures to accommodate this.

Therefore, for the elections called under Sections 7 and 9.3 of this act:

- (1) In applying G.S. 163-33(8), "10 days" is substituted for "20 days", and "10-day" is substituted for "20-day".
- (2) In applying G.S. 163-288.2 on account of G.S. 163-288.1A, "one-week period" is substituted for "two-week period" all places, "At least two days", is substituted for "At least one week" all places, and "one Saturday" is substituted for "two Saturdays".
- (3) Notwithstanding G.S. 163-302(a), absentee voting shall not be allowed.

Section 10. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 23rd day of September, 1998.

Became law on the date it was ratified.

H.B. 1633

SESSION LAW 1998-152

AN ACT TO ALLOW CORRECTION OF AN ERROR IN A 1921 SURVEY OF AN ANNEXATION TO THE TOWN OF SPRUCE PINE, TO ANNEX CERTAIN DESCRIBED TERRITORY TO THE TOWN OF LAKE WACCAMAW, AND TO CLARIFY THE BOUNDARIES OF THE TOWN OF MOCKSVILLE BY ANNEXING AN AREA WHOLLY SURROUNDED BY THE CORPORATE LIMITS, SOME OF WHICH AN ACCURATE SURVEY HAS NOW SHOWN TO HAVE BEEN ANNEXED IN 1895 BUT NOT RECOGNIZED AS PART OF THE TOWN UNTIL A RECENT SURVEY.

The General Assembly of North Carolina enacts:

Section 1. (a) The corporate limits of the Town of Spruce Pine are reduced by excluding any parcels which had not been billed for ad valorem taxes in 1997 which were billed in 1998, as a result of a new survey discovering that these parcels were in the area annexed by Chapter 27, Private Laws of 1921.

(b) Notwithstanding subsection (a) of this section, the owners of any of such parcels may make written request to the Clerk of the Town of Spruce Pine that their parcel remain in the corporate limits. Said request must be made no later than 15 February 1999. Upon receipt of such request or requests the Town of Spruce Pine may by ordinance provide for all or part of those parcels (and any streets, roads and rights-of-way used by those parcels for access) to be and remain within the corporate limits of the Town of Spruce Pine. Upon the adoption of said ordinance those parcels included within the Ordinance together with the streets, roads and rights-of-way included therein shall be included within the corporate limits of the Town of Spruce Pine. Any such Ordinance shall be adopted on or before June 30, 1999.

(c) Except as provided by Section 2 of this act, this section becomes effective February 11, 1921, except that the areas covered by ordinance adopted under subsection (b) of this section shall be considered to have been in the corporate limits only from and after June 30, 1999.

Section 2. (a) Notwithstanding Section 1 of this act, the Town Council of the Town of Spruce Pine may submit to an election of the registered voters living within the corporate limits of the Town of Spruce Pine, including those registered voters within the entire area described in Chapter 27, Private Laws of 1921, the question of whether or not the corporate limits of that town shall remain as set out in Chapter 27, Private Laws of 1921.

Any such election shall be called by resolution of the Town Council adopted on or before February 15, 1999, and shall be conducted on a date no later than June 15, 1999. The election shall be held in accordance with general law, except if the election is conducted at the same time as the 1998 general election, for the election called under this section:

- (1) In applying G.S. 163-33(8), "10 days" is substituted for "20 days", and "10-day" is substituted for "20-day".
- (2) If absentee ballots are otherwise allowed by law, the Town Council may provide that absentee ballots shall not be used.
- (b) The question on the ballot shall be:

"[] YES [] NO

Shall the corporate limits of the Town of Spruce Pine as established by Chapter 27, 1921 Private Laws of North Carolina, be changed by deleting from the corporate limits all those parcels of real property which had not been billed for ad valorem taxes in 1997 which were billed in 1998, as a result of a new survey discovering that these parcels were in the area annexed by Chapter 27, Private Laws of 1921?"

(c) Should the Town Council of the Town of Spruce Pine fail to call for such special election by the February 15, 1999, deadline provided by subsection (a) of this section, or should the election be held and the majority of votes be cast "YES" on the question, then Section 1 of this act becomes effective in accordance with its terms.

(d) Should the election be held and the majority of votes are not cast "YES", then Section 1 of this act is repealed and is of no effect, and the corporate limits of the Town of Spruce Pine shall remain as described in Chapter 27, Private Laws of 1921, except as changed by other acts of the General Assembly or in accordance with law.

Section 2.1. (a) The corporate limits of the Town of Lake Waccamaw are extended to include the following described territory:

Waccamaw Shores Drive

BEGINNING at an existing concrete monument, in the northeast right-of-way of Waccamaw Shores Drive, also known as S.R. 1967, said existing concrete monument marking the most southern corner of the Lake Waccamaw Camp Ground lands now or formerly belonging to Gene Grainger as recorded in Deed Book 385 Page 531 Columbus County Registry, said existing concrete monument also marking the most western corner of lands of James and Paul Council as recorded in Deed Book 261 Page 189 of the Columbus County Registry. Said existing concrete

monument also marking the most southern limits of the Town of Lake Waccamaw. Running thence along the eastern edge of Waccamaw Shores Drive in a southeasterly direction to an existing concrete monument marking the southwest corner of lot 273 Block A of the Waccamaw Shores Subdivision as shown and delineated on a plat recorded in Plat Book 8 Page 12 of the Columbus County Registry. Thence continuing along the south line of lot 273, North 82 degrees 28 minutes East - 105.83 feet to an iron marking the southeast corner of lot 273 said iron being located South 40 degrees 29 minutes 30 seconds West - 47.07 feet from NC Grid Station "Dam". Said NC Grid Station "Dam" being located on the West End of the Dam at Lake Waccamaw that accommodates the waters of Lake Waccamaw into the Waccamaw River. Thence with the high water of Lake Waccamaw in a northwardly and northwestwardly direction to an old pipe marking the southeast corner of lot 259 of the J. L. Sides Subdivision as shown and delineated on Plat recorded in Plat Book 4 Page 69 of the Columbus County Registry. Said old pipe also marking a corner of the limits of the Town of Lake Waccamaw. Thence along the south line of lot 259 heretofore referred to and also the existing limits of the Town of Lake Waccamaw, South 75 degrees 45 minutes West - 106.59 feet to an old iron marking the southwest corner of lot 259. Said old iron also being located in the northeastern line of the James and Paul Council lands as described in Deed recorded in Deed Book 261 Page 189. Thence with the James and Paul Council line and also the existing limits of the Town of Lake Waccamaw, North 48 degrees 48 minutes 57 seconds West - 78.51 feet to an existing concrete monument marking the most eastern corner of the heretofore referred Gene Grainger lands. Thence with the Grainger line and also the existing limits of the Town of Lake Waccamaw, South 23 degrees 25 minutes West - 111.21 feet to the BEGINNING.

Shawnee Acres and Bella Coola

BEGINNING at Town Survey monument number 12, said Town Survey monument being located at the intersection of the center line of S.R. 1947 (locally known as Bella Coola Road) and the eastern limits of the Town of Lake Waccamaw. Running thence from said BEGINNING Town Survey monument number 12 and along the centerline of S.R. 1947 in a southeastwardly and southerly direction to a point in said centerline. Thence leaving said centerline, South 88 degrees 02 minutes 22 seconds West - approximately 30 feet to an iron marking the southeast corner of lot 51 according to "Map of a Survey for Bella Coola Corp.", prepared by David B. Goldston, Jr., R.L.S., dated 30 October 1978". Thence with the south line of lot 51, South 88 degrees 02 minutes 22 seconds West - 200.00 feet to an iron in the high watermark of Lake Waccamaw. Thence with the high watermark of Lake Waccamaw in a northerly and northwestwardly direction to Town Survey monument number 14. Said Town Survey monument number 14 marking the southeast corner of the limits of the Town of Lake Waccamaw. Thence with the eastern limits of the Town of Lake Waccamaw, North 01 degrees 11 minutes 20 seconds West - 271.73 feet to Town Survey monument 13 located in the centerline of S.R. 1942 (locally known as Creek Ridge Road). Thence continuing with the eastern

limits of the Town of Lake Waccamaw, North 01 degrees 11 minutes 20 seconds West - 295.14 feet to the BEGINNING.

(b) Subsection (a) of this section becomes effective only upon adoption of an ordinance by the Town of Lake Waccamaw.

(c) This section becomes effective June 30, 1999.

Section 2.2. (a) The corporate limits of the Town of Mocksville are extended by including the following described areas: All of Twinbrook Acres Subdivision, as shown in Plat Book 5, Page 51, Davie County Registry (including right-of-way) which on September 1, 1998, was entirely surrounded by the corporate limits of the Town.

(b) This section becomes effective June 30, 1999, and any area described in subsection (a) of this section which might have also been annexed by Chapter 172, Private Laws of 1895 shall be considered to be in the corporate limits of the Town only from and after June 30, 1999.

Section 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 24th day of September, 1998.

Became law on the date it was ratified.

S.B. 879

SESSION LAW 1998-153

AN ACT TO (I) ENACT TEACHER SALARY SCHEDULES, SCHOOL-BASED ADMINISTRATOR SALARY SCHEDULES, AND SCHOOL CENTRAL OFFICE SALARY RANGES, (II) GRANT SALARY INCREASES OF THREE PERCENT FOR OTHER PUBLIC SCHOOL EMPLOYEES AND FOR MOST STATE EMPLOYEES, (III) PROVIDE BONUSES OF ONE PERCENT FOR OTHER PUBLIC SCHOOL EMPLOYEES AND FOR MOST STATE EMPLOYEES, (IV) MODIFY THE COMPUTATION OF YEARS OF SERVICE FOR TEACHER ASSISTANTS, (V) GRANT COST-OF-LIVING INCREASES OF TWO AND ONE-HALF PERCENT TO MOST RETIREES FROM STATE-ADMINISTERED RETIREMENT SYSTEMS, (VI) SET EMPLOYER CONTRIBUTION RATES FOR THE STATE-ADMINISTERED RETIREMENT SYSTEMS, (VII) PROVIDE FOR A SALARY ADJUSTMENT FUND, AND (VIII) APPROPRIATE FUNDS FOR THESE PURPOSES.

The General Assembly of North Carolina enacts:

TEACHER SALARY SCHEDULES

Section 1. (a) Effective for the 1998-99 school year, the Director of the Budget may transfer from the Reserve for Compensation Increase for the 1998-99 fiscal year funds necessary to implement the teacher salary schedule set out in subsection (b) of this section, including funds for the employer's retirement and social security contributions and funds for annual longevity payments at one percent (1%) of base salary for 10 to 14 years of State service, one and one-half percent (1.5%) of base salary for 15 to 19 years of State service, two percent (2%) of base salary for 20 to 24 years of State service, and four and one-half percent (4.5%) of base salary for 25 or more years of State service, commencing July 1, 1998, for all teachers whose

salaries are supported from the State's General Fund. These funds shall be allocated to individuals according to rules adopted by the State Board of Education and the Superintendent of Public Instruction. The longevity payment shall be paid in a lump sum once a year.

- (b)(1) For the 1998-99 school year, the following monthly salary schedules shall apply to certified personnel of the public schools who are classified as teachers. The schedule contains 30 steps with each step corresponding to one year of teaching experience.

1998-99 Monthly Salary Schedule
"A" Teachers

Years of Experience	"A" Teachers	NBPTS Certification
0	2,310	N/A
1	2,352	N/A
2	2,395	N/A
3	2,551	2,857
4	2,678	2,999
5	2,779	3,112
6	2,826	3,165
7	2,874	3,218
8	2,923	3,273
9	2,972	3,328
10	3,021	3,383
11	3,071	3,439
12	3,123	3,497
13	3,176	3,557
14	3,230	3,617
15	3,285	3,679
16	3,341	3,741
17	3,398	3,805
18	3,456	3,870
19	3,516	3,937
20	3,577	4,006
21	3,640	4,076
22	3,703	4,147
23	3,767	4,219
24	3,832	4,291
25	3,899	4,366
26	3,968	4,444
27	4,038	4,522
28	4,109	4,602
29+	4,182	4,683

1998-99 Monthly Salary Schedule
"G" Teachers

Years of Experience	"G" Teachers	NBPTS Certification
0	2,454	N/A
1	2,499	N/A
2	2,545	N/A
3	2,710	3,035
4	2,845	3,186
5	2,953	3,307
6	3,003	3,363
7	3,054	3,420
8	3,106	3,478
9	3,158	3,536
10	3,210	3,595
11	3,263	3,654
12	3,318	3,716
13	3,375	3,780
14	3,432	3,843
15	3,490	3,908
16	3,550	3,976
17	3,610	4,043
18	3,672	4,112
19	3,736	4,184
20	3,801	4,257
21	3,868	4,332
22	3,934	4,406
23	4,002	4,482
24	4,072	4,560
25	4,143	4,640
26	4,216	4,721
27	4,290	4,804
28	4,366	4,889
29+	4,443	4,976

- (2) Certified public school teachers with certification based on academic preparation at the six-year degree level shall receive a salary supplement of one hundred twenty-six dollars (\$126.00) per month in addition to the compensation provided for certified personnel of the public schools who are classified as "G" teachers. Certified public school teachers with certification based on academic preparation at the doctoral degree level shall receive a salary supplement of two hundred fifty-three dollars (\$253.00) per month in addition to the compensation provided for certified personnel of the public schools who are classified as "G" teachers.

(c) Effective for the 1998-99 school year, the first step of the salary schedule for school psychologists shall be equivalent to Step 5, corresponding to five years of experience, on the salary schedule established in this section for certified personnel of the public schools who are classified as "G" teachers. Certified psychologists shall be placed on the salary schedule at an appropriate step based on their years of experience. Certified

psychologists shall receive longevity payments based on years of State service in the same manner as teachers.

Certified psychologists with certification based on academic preparation at the six-year degree level shall receive a salary supplement of one hundred twenty-six dollars (\$126.00) per month in addition to the compensation provided for certified psychologists. Certified psychologists with certification based on academic preparation at the doctoral degree level shall receive a salary supplement of two hundred fifty-three dollars (\$253.00) per month in addition to the compensation provided for certified psychologists.

(d) Effective for the 1998-99 school year, speech pathologists who are certified as speech pathologists at the masters degree level and audiologists who are certified as audiologists at the masters degree level and who are employed in the public schools as speech and language specialists and audiologists shall be paid on the school psychologist salary schedule.

Speech pathologists and audiologists with certification based on academic preparation at the six-year degree level shall receive a salary supplement of one hundred twenty-six dollars (\$126.00) per month in addition to the compensation provided for speech pathologists and audiologists. Speech pathologists and audiologists with certification based on academic preparation at the doctoral degree level shall receive a salary supplement of two hundred fifty-three dollars (\$253.00) per month in addition to the compensation provided for speech pathologists and audiologists.

(e) The State Board of Education shall study the current salary schedules for nurses and other allied health professionals. The State Board shall report to the Joint Legislative Education Oversight Committee prior to December 15, 1998, on the results of its study and on any recommended modifications to the current salary schedules.

SCHOOL-BASED ADMINISTRATOR SALARIES

Section 2. (a) Funds appropriated to the Reserve for Compensation Increase shall be used for the implementation of the salary schedule for school-based administrators as provided in this section. These funds shall be used for State-paid employees only.

(b) The salary schedule for school-based administrators shall apply only to principals and assistant principals. The salary schedule for the 1998-99 fiscal year, commencing July 1, 1998, is as follows:

Step	Assistant Principals			Principal I		
	Base	Base + 1%	Base + 2%	Base	Base + 1%	Base + 2%
4	\$2,873	\$2,902	\$2,930	--	--	--
5	2,983	3,013	3,043	--	--	--
6	3,033	3,063	3,094	--	--	--
7	3,085	3,116	3,147	--	--	--
8	3,137	3,168	3,200	\$3,137	\$3,168	\$3,200
9	3,190	3,222	3,254	3,190	3,222	3,254
10	3,242	3,274	3,307	3,242	3,274	3,307
11	3,296	3,329	3,362	3,296	3,329	3,362

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12	3,351	3,385	3,418	3,351	3,385	3,418
13	3,409	3,443	3,477	3,409	3,443	3,477
14	3,466	3,501	3,535	3,466	3,501	3,535
15	3,525	3,560	3,596	3,525	3,560	3,596
16	3,586	3,622	3,658	3,586	3,622	3,658
17	3,646	3,682	3,719	3,646	3,682	3,719
18	3,709	3,746	3,783	3,709	3,746	3,783
19	3,773	3,811	3,848	3,773	3,811	3,848
20	3,839	3,877	3,916	3,839	3,877	3,916
21	3,907	3,946	3,985	3,907	3,946	3,985
22	3,973	4,013	4,052	3,973	4,013	4,052
23	4,042	4,082	4,123	4,042	4,082	4,123
24	4,113	4,154	4,195	4,113	4,154	4,195
25	4,184	4,226	4,268	4,184	4,226	4,268
26	4,258	4,301	4,343	4,258	4,301	4,343
27	4,333	4,376	4,420	4,333	4,376	4,420
28	4,410	4,454	4,498	4,410	4,454	4,498
29	4,487	4,532	4,577	4,487	4,532	4,577
30	4,577	4,623	4,669	4,577	4,623	4,669
31	4,669	4,716	4,762	4,669	4,716	4,762
32	--	--	--	4,762	4,810	4,857

Step	Principal II			Principal III		
	Base	Base + 1%	Base + 2%	Base	Base + 1%	Base + 2%
4	--	--	--	--	--	--
5	--	--	--	--	--	--
6	--	--	--	--	--	--
7	--	--	--	--	--	--
8	--	--	--	--	--	--
9	--	--	--	--	--	--
10	\$3,296	\$3,329	\$3,362	--	--	--
11	3,351	3,385	3,418	--	--	--
12	3,409	3,443	3,477	\$3,466	\$3,501	\$3,535
13	3,466	3,501	3,535	3,525	3,560	3,596
14	3,525	3,560	3,596	3,586	3,622	3,658
15	3,586	3,622	3,658	3,646	3,682	3,719
16	3,646	3,682	3,719	3,709	3,746	3,783
17	3,709	3,746	3,783	3,773	3,811	3,848
18	3,773	3,811	3,848	3,839	3,877	3,916
19	3,839	3,877	3,916	3,907	3,946	3,985
20	3,907	3,946	3,985	3,973	4,013	4,052
21	3,973	4,013	4,052	4,042	4,082	4,123
22	4,042	4,082	4,123	4,113	4,154	4,195
23	4,113	4,154	4,195	4,184	4,226	4,268
24	4,184	4,226	4,268	4,258	4,301	4,343
25	4,258	4,301	4,343	4,333	4,376	4,420
26	4,333	4,376	4,420	4,410	4,454	4,498

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27	4,410	4,454	4,498	4,487	4,532	4,577
28	4,487	4,532	4,577	4,577	4,623	4,669
29	4,577	4,623	4,669	4,669	4,716	4,762
30	4,669	4,716	4,762	4,762	4,810	4,857
31	4,762	4,810	4,857	4,857	4,906	4,954
32	4,857	4,906	4,954	4,954	5,004	5,053
33	4,954	5,004	5,053	5,053	5,104	5,154
34	5,053	5,104	5,154	5,154	5,206	5,257
35	--	--	--	5,257	5,310	5,362
36	--	--	--	5,362	5,416	5,469

Step	Principal IV			Principal V		
	Base	Base + 1%	Base + 2%	Base	Base + 1%	Base + 2%
4	--	--	--	--	--	--
5	--	--	--	--	--	--
6	--	--	--	--	--	--
7	--	--	--	--	--	--
8	--	--	--	--	--	--
9	--	--	--	--	--	--
10	--	--	--	--	--	--
11	--	--	--	--	--	--
12	--	--	--	--	--	--
13	\$3,586	\$3,622	\$3,658	--	--	--
14	3,646	3,682	3,719	\$3,709	\$3,746	\$3,783
15	3,709	3,746	3,783	3,773	3,811	3,848
16	3,773	3,811	3,848	3,839	3,877	3,916
17	3,839	3,877	3,916	3,907	3,946	3,985
18	3,907	3,946	3,985	3,973	4,013	4,052
19	3,973	4,013	4,052	4,042	4,082	4,123
20	4,042	4,082	4,123	4,113	4,154	4,195
21	4,113	4,154	4,195	4,184	4,226	4,268
22	4,184	4,226	4,268	4,258	4,301	4,343
23	4,258	4,301	4,343	4,333	4,376	4,420
24	4,333	4,376	4,420	4,410	4,454	4,498
25	4,410	4,454	4,498	4,487	4,532	4,577
26	4,487	4,532	4,577	4,577	4,623	4,669
27	4,577	4,623	4,669	4,669	4,716	4,762
28	4,669	4,716	4,762	4,762	4,810	4,857
29	4,762	4,810	4,857	4,857	4,906	4,954
30	4,857	4,906	4,954	4,954	5,004	5,053
31	4,954	5,004	5,053	5,053	5,104	5,154
32	5,053	5,104	5,154	5,154	5,206	5,257
33	5,154	5,206	5,257	5,257	5,310	5,362
34	5,257	5,310	5,362	5,362	5,416	5,469
35	5,362	5,416	5,469	5,469	5,524	5,578
36	5,469	5,524	5,578	5,578	5,634	5,690
37	5,578	5,634	5,690	5,689	5,746	5,803

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38	--	--	--	5,803	5,861	5,919
39	--	--	--	--	--	--
40	--	--	--	--	--	--
41	--	--	--	--	--	--

Step	Principal VI			Principal VII		
	Base	Base + 1%	Base + 2%	Base	Base + 1%	Base + 2%
4	--	--	--	--	--	--
5	--	--	--	--	--	--
6	--	--	--	--	--	--
7	--	--	--	--	--	--
8	--	--	--	--	--	--
9	--	--	--	--	--	--
10	--	--	--	--	--	--
11	--	--	--	--	--	--
12	--	--	--	--	--	--
13	--	--	--	--	--	--
14	--	--	--	--	--	--
15	--	--	--	--	--	--
16	\$3,907	\$3,946	\$3,985	--	--	--
17	3,973	4,013	4,052	\$4,113	\$4,154	\$4,195
18	4,042	4,082	4,123	4,184	4,226	4,268
19	4,113	4,154	4,195	4,258	4,301	4,343
20	4,184	4,226	4,268	4,333	4,376	4,420
21	4,258	4,301	4,343	4,410	4,454	4,498
22	4,333	4,376	4,420	4,487	4,532	4,577
23	4,410	4,454	4,498	4,577	4,623	4,669
24	4,487	4,532	4,577	4,669	4,716	4,762
25	4,577	4,623	4,669	4,762	4,810	4,857
26	4,669	4,716	4,762	4,857	4,906	4,954
27	4,762	4,810	4,857	4,954	5,004	5,053
28	4,857	4,906	4,954	5,053	5,104	5,154
29	4,954	5,004	5,053	5,154	5,206	5,257
30	5,053	5,104	5,154	5,257	5,310	5,362
31	5,154	5,206	5,257	5,362	5,416	5,469
32	5,257	5,310	5,362	5,469	5,524	5,578
33	5,362	5,416	5,469	5,578	5,634	5,690
34	5,469	5,524	5,578	5,689	5,746	5,803
35	5,578	5,634	5,690	5,803	5,861	5,919
36	5,689	5,746	5,803	5,920	5,979	6,038
37	5,803	5,861	5,919	6,038	6,098	6,159
38	5,920	5,979	6,038	6,159	6,221	6,282
39	6,038	6,098	6,159	6,282	6,345	6,408
40	6,159	6,221	6,282	6,407	6,471	6,535
41	--	--	--	6,536	6,601	6,667

Principal VIII

Step	Base	Base + 1 %	Base + 2 %
4	--	--	--
5	--	--	--
6	--	--	--
7	--	--	--
8	--	--	--
9	--	--	--
10	--	--	--
11	--	--	--
12	--	--	--
13	--	--	--
14	--	--	--
15	--	--	--
16	--	--	--
17	--	--	--
18	\$4,258	\$4,301	\$4,343
19	4,333	4,376	4,420
20	4,410	4,454	4,498
21	4,487	4,532	4,577
22	4,577	4,623	4,669
23	4,669	4,716	4,762
24	4,762	4,810	4,857
25	4,857	4,906	4,954
26	4,954	5,004	5,053
27	5,053	5,104	5,154
28	5,154	5,206	5,257
29	5,257	5,310	5,362
30	5,362	5,416	5,469
31	5,469	5,524	5,578
32	5,578	5,634	5,690
33	5,689	5,746	5,803
34	5,803	5,861	5,919
35	5,920	5,979	6,038
36	6,038	6,098	6,159
37	6,159	6,221	6,282
38	6,282	6,345	6,408
39	6,407	6,471	6,535
40	6,536	6,601	6,667
41	6,667	6,734	6,800

(c) The appropriate classification for placement of principals and assistant principals on the salary schedule, except for principals in alternative schools, shall be determined in accordance with the following schedule:

Classification	Number of Teachers Supervised
Assistant Principal	
Principal I	Fewer than 11 Teachers
Principal II	11-21 Teachers
Principal III	22-32 Teachers
Principal IV	33-43 Teachers
Principal V	44-54 Teachers
Principal VI	55-65 Teachers
Principal VII	66-100 Teachers
Principal VIII	More than 100 Teachers

The number of teachers supervised includes teachers and assistant principals paid from State funds only; it does not include teachers or assistant principals paid from non-State funds or the principal or teacher assistants.

The beginning classification for principals in alternative schools shall be the Principal III level. Principals in alternative schools who supervise 33 or more teachers shall be classified according to the number of teachers supervised.

(d) A principal shall be placed on the step on the salary schedule that reflects total number of years of experience as a certificated employee of the public schools and an additional step for every three years of experience as a principal.

(e) For the 1998-99 fiscal year, a principal or assistant principal shall be placed on the appropriate step plus one percent (1%) if:

- (1) The employee's school met or exceeded the projected levels of improvement in student performance for the 1997-98 fiscal year, in accordance with the ABCs of Public Education Program; or
- (2) The local board of education found in 1997-98 that the employee's school met objectively measurable goals set by the local board of education for maintaining a safe and orderly school.

The principal or assistant principal shall be placed on the appropriate step plus two percent (2%) if the conditions set out in both subdivisions (1) and (2) are satisfied.

(f) For the 1998-99 fiscal year, a principal or assistant principal shall receive a lump-sum payment of:

- (1) One percent (1%) of his or her State-paid salary if the employee's school meets or exceeds the projected levels of improvement in student performance for the 1998-99 fiscal year, in accordance with the ABCs of Public Education Program; or
- (2) One percent (1%) of his or her State-paid salary if the local board of education finds that the employee's school has met the goals of the local plan for maintaining a safe and orderly school.

The principal or assistant principal shall receive a lump-sum payment of two percent (2%) if the conditions set out in both subdivisions (1) and (2) are satisfied.

The lump sum shall be paid as determined by guidelines adopted by the State Board. Placement on the salary schedule in the following year shall be based upon these increases.

(g) Principals and assistant principals with certification based on academic preparation at the six-year degree level shall be paid a salary supplement of one hundred twenty-six dollars (\$126.00) per month and at the doctoral degree level shall be paid a salary supplement of two hundred fifty-three dollars (\$253.00) per month.

(h) There shall be no State requirement that superintendents in each local school unit shall receive in State-paid salary at least one percent (1%) more than the highest paid principal receives in State salary in that school unit: Provided, however, the additional State-paid salary a superintendent who was employed by a local school administrative unit for the 1992-93 fiscal year received because of that requirement shall not be reduced because of this subsection for subsequent fiscal years that the superintendent is employed by that local school administrative unit so long as the superintendent is entitled to at least that amount of additional State-paid salary under the rules in effect for the 1992-93 fiscal year.

(i) Longevity pay for principals and assistant principals shall be as provided for State employees.

(j)(1) If a principal is reassigned to a higher job classification because the principal is transferred to a school within a local school administrative unit with a larger number of State-allotted teachers, the principal shall be placed on the salary schedule as if the principal had served the principal's entire career as a principal at the higher job classification.

(2) If a principal is reassigned to a lower job classification because the principal is transferred to a school within a local school administrative unit with a smaller number of State-allotted teachers, the principal shall be placed on the salary schedule as if the principal had served the principal's entire career as a principal at the lower job classification.

This subdivision applies to all transfers on or after the effective date of this section, except transfers in school systems that have been created, or will be created, by merging two or more school systems. Transfers in these merged systems are exempt from the provisions of this subdivision for one calendar year following the date of the merger.

(k) Participants in an approved full-time masters in school administration program shall receive up to a 10-month stipend at the beginning salary of an assistant principal during the internship period of the masters program. Certification of eligible full-time interns shall be supplied to the Department of Public Instruction by the Principal's Fellow Program or a school of education where the intern participates in a full-time masters in school administration.

GOVERNOR AND COUNCIL OF STATE/SALARY INCREASES

Section 3. (a) G.S. 147-11(a) reads as rewritten:

"(a) The salary of the Governor shall be ~~one hundred seven thousand one hundred thirty-two dollars (\$107,132)~~ one hundred ten thousand three hundred forty-six dollars (\$110,346) annually, payable monthly."

(b) Section 33(b) of Chapter 443 of the 1997 Session Laws reads as rewritten:

"(b) The annual salaries for the members of the Council of State, payable monthly, for the ~~1997-98 and~~ 1998-99 fiscal ~~years,~~ year, beginning ~~July 1, 1997,~~ July 1, 1998, are:

<u>Council of State</u>	<u>Annual Salary</u>	
Lieutenant Governor	\$94,552	<u>\$97,388</u>
Attorney General	94,552	<u>97,388</u>
Secretary of State	94,552	<u>97,388</u>
State Treasurer	94,552	<u>97,388</u>
State Auditor	94,552	<u>97,388</u>
Superintendent of Public Instruction	94,552	<u>97,388</u>
Agriculture Commissioner	94,552	<u>97,388</u>
Insurance Commissioner	94,552	<u>97,388</u>
Labor Commissioner	94,552.	<u>97,388."</u>

NONELECTED DEPARTMENT HEADS/SALARY INCREASES

Section 4. Section 33.1 of Chapter 443 of the 1997 Session Laws reads as rewritten:

"Section 33.1. In accordance with G.S. 143B-9, the maximum annual salaries, payable monthly, for the nonelected heads of the principal State departments for the ~~1997-98 and~~ 1998-99 fiscal ~~years,~~ year, beginning ~~July 1, 1997,~~ July 1, 1998, are:

<u>Nonelected Department Heads</u>	<u>Annual Salary</u>	
Secretary of Administration	\$92,378	<u>\$95,149</u>
Secretary of Correction	92,378	<u>95,149</u>
Secretary of Cultural Resources	92,378	<u>95,149</u>
Secretary of Commerce	92,378	<u>95,149</u>
Secretary of Environment, Health, <u>Environment and Natural Resources</u>	92,378	<u>95,149</u>
Secretary of Health and Human Resources <u>Services</u>	92,378	<u>95,149</u>
Secretary of Revenue	92,378	<u>95,149</u>
Secretary of Transportation	92,378	<u>95,149</u>
Secretary of Crime Control and Public Safety	92,378.	<u>95,149."</u>

CERTAIN EXECUTIVE BRANCH OFFICIALS/SALARY INCREASES

Section 5. Section 33.2 of Chapter 443 of the 1997 Session Laws reads as rewritten:

"Section 33.2. The annual salaries, payable monthly, for the ~~1997-98 and~~ 1998-99 fiscal ~~years,~~ year, beginning ~~July 1, 1997,~~ July 1, 1998, for the following executive branch officials are:

Executive Branch OfficialsAnnual Salary

Chairman, Alcoholic Beverage Control Commission	\$ 84,080	\$86,602
State Controller	117,669	<u>121,199</u>
Commissioner of Motor Vehicles	84,080	<u>86,602</u>
Commissioner of Banks	94,552	<u>97,389</u>
Chairman, Employment Security Commission	117,520	<u>121,046</u>
State Personnel Director	92,378	<u>95,149</u>
Chairman, Parole Commission	76,775	<u>79,078</u>
Members of the Parole Commission	70,881	<u>73,008</u>
Chairman of the Utilities Commission	95,592	<u>98,460</u>
Commissioners of the Utilities Commission	94,552	<u>97,388</u>
Executive Director, Agency for Public Telecommunications	70,881	<u>73,008</u>
General Manager, Ports Railway Commission	64,005	<u>65,925</u>
Director, Museum of Art	86,155	<u>88,739</u>
Executive Director, Wildlife Resources Commission	72,569	<u>74,746</u>
Executive Director, North Carolina Housing Finance Agency	104,057	<u>107,179</u>
Executive Director, North Carolina Agricultural Finance Authority	81,839	<u>84,294</u>
Director, Office of Administrative Hearings	83,141	<u>86,155</u>

JUDICIAL BRANCH OFFICIALS/SALARY INCREASES

Section 6. (a) Section 33.7 of Chapter 443 of the 1997 Session Laws reads as rewritten:

"Section 33.7. (a) The annual salaries, payable monthly, for specified judicial branch officials for the ~~1997-98 and~~ 1998-99 fiscal years, year, beginning ~~July 1, 1997,~~ July 1, 1998, are:

Judicial Branch OfficialsAnnual Salary

Chief Justice, Supreme Court	\$107,132	\$110,346
Associate Justice, Supreme Court	104,333	<u>107,463</u>
Chief Judge, Court of Appeals	101,724	<u>104,776</u>
Judge, Court of Appeals	99,986	<u>102,985</u>
Judge, Senior Regular Resident Superior Court	97,269	<u>100,187</u>
Judge, Superior Court	94,552	<u>97,388</u>
Chief Judge, District Court	85,857	<u>88,433</u>
Judge, District Court	83,141	<u>85,635</u>
District Attorney	87,596	<u>90,224</u>
Administrative Officer of the Courts	97,269	<u>100,187</u>
Assistant Administrative Officer of the Courts	81,684	<u>84,134</u>
Public Defender	87,596	<u>90,224</u>

~~(b) The district attorney or public defender of a judicial district, with the approval of the Administrative Officer of the Courts, shall set the salaries of~~

~~assistant district attorneys or assistant public defenders, respectively, in that district such that the average salaries of assistant district attorneys or assistant public defenders in that district do not exceed fifty-three thousand eight hundred eighty-three dollars (\$53,883) and the minimum salary of any assistant district attorney or assistant public defender is at least twenty-seven thousand five hundred nine dollars (\$27,509), effective July 1, 1997.~~

~~(c) The salaries in effect for the 1996-97 fiscal year on June 30, 1997, for permanent, full-time employees of the Judicial Department, except for those whose salaries are itemized in this Part, shall be increased by four percent (4%), commencing July 1, 1997.~~

~~(d) The salaries in effect on June 30, 1997, June 30, 1998, for all permanent, part-time employees of the Judicial Department shall be increased on and after July 1, 1997, by pro rata amounts of four percent (4%)."~~

(b) The district attorney or public defender of a judicial district, with the approval of the Administrative Officer of the Courts, shall set the salaries of assistant district attorneys or assistant public defenders, respectively, in that district such that the average salaries of assistant district attorneys or assistant public defenders in that district do not exceed fifty-five thousand five hundred dollars (\$55,500) and the minimum salary of any assistant district attorney or assistant public defender is at least twenty-eight thousand three hundred thirty-four dollars (\$28,334), effective July 1, 1998.

(c) The salaries in effect for the 1997-98 fiscal year on June 30, 1998, for permanent, full-time employees of the Judicial Department, except for those whose salaries are itemized in this Act, shall be increased by three percent (3%), commencing July 1, 1998.

(d) The salaries in effect on June 30, 1998, for all permanent, part-time employees of the Judicial Department shall be increased on and after July 1, 1998, by pro rata amounts of three percent (3%).

CLERKS OF SUPERIOR COURT/SALARY INCREASES

Section 7. G.S. 7A-101(a) reads as rewritten:

"(a) The clerk of superior court is a full-time employee of the State and shall receive an annual salary, payable in equal monthly installments, based on the population of the county as determined in subsection (a1) of this section, according to the following schedule:

Population	Annual Salary	
Less than 100,000	\$62,676	\$64,556
100,000 to 149,999	70,403	72,515
150,000 to 249,999	78,130	80,474
250,000 and above	85,857	88,433.

The salary schedule in this subsection is intended to represent the following percentage of the salary of a chief district court judge:

Population	Annual Salary
Less than 100,000	73%

100,000 to 149,999	82%
150,000 to 249,999	91%
250,000 and above	100%.

When a county changes from one population group to another, the salary of the clerk shall be changed, on July 1 of the fiscal year for which the change is reported, to the salary appropriate for the new population group, except that the salary of an incumbent clerk shall not be decreased by any change in population group during his continuance in office."

ASSISTANT AND DEPUTY CLERKS OF SUPERIOR COURT/SALARY INCREASES

Section 8. (a) Effective July 1, 1998, those State employees whose salaries are determined by G.S. 7A-102 shall receive across-the-board salary increases in the amount of three percent (3%) in addition to step increases associated with their respective pay plans.

(b) G.S. 7A-102(c1) reads as rewritten:

"(c1) A full-time assistant clerk or a full-time deputy clerk, and up to one full-time deputy clerk serving as head bookkeeper per county, shall be paid an annual salary subject to the following minimum and maximum rates:

Assistant Clerks and Head Bookkeeper		Annual Salary
Minimum	\$23,420	\$24,122
Maximum	41,466	<u>42,710</u>
Deputy Clerks		Annual Salary
Minimum	\$18,724	\$19,286
Maximum	31,940.	<u>32,899."</u>

MAGISTRATES/SALARY INCREASES

Section 9. Effective July 1, 1998, magistrates shall receive salary increases in the amount of three percent (3%), except that any person entitled to a step increase pursuant to G.S. 7A-171.1 for the 1998-99 fiscal year shall not receive the three percent increase provided by this section.

GENERAL ASSEMBLY PRINCIPAL CLERKS/SALARY INCREASES

Section 10. G.S. 120-37(c) reads as rewritten:

"(c) The principal clerks shall be full-time officers. Each principal clerk shall be entitled to other benefits available to permanent legislative employees and shall be paid an annual salary of ~~fifty-nine thousand eight hundred sixty-one dollars (\$59,861)~~ sixty-one thousand six hundred fifty-seven dollars (\$61,657) payable monthly. The Legislative Services Commission shall review the salary of the principal clerks prior to submission of the proposed operating budget of the General Assembly to the Governor and Advisory Budget Commission and shall make appropriate recommendations for changes in those salaries. Any changes enacted by the General Assembly shall be by amendment to this paragraph."

SERGEANT-AT-ARMS AND READING CLERKS/SALARY INCREASES

Section 11. G.S. 120-37(b) reads as rewritten:

"(b) The sergeant-at-arms and the reading clerk in each house shall be paid a salary of ~~two hundred fifty-eight dollars (\$258.00)~~ two hundred sixty-six (\$266.00) per week plus subsistence at the same daily rate provided for members of the General Assembly, plus mileage at the rate provided for members of the General Assembly for one round trip only from their homes to Raleigh and return. The sergeants-at-arms shall serve during sessions of the General Assembly and at such time prior to the convening of, and subsequent to adjournment or recess of, sessions as may be authorized by the Legislative Services Commission. The reading clerks shall serve during sessions only."

LEGISLATIVE EMPLOYEES/SALARY INCREASES

Section 12. The Legislative Administrative Officer shall increase the salaries of nonelected employees of the General Assembly in effect for fiscal year 1997-98 by three percent (3%). Nothing in this act limits any of the provisions of G.S. 120-32.

COMMUNITY COLLEGES PERSONNEL/SALARY INCREASES

Section 13. The Director of the Budget shall transfer from the Reserve for Salary Increases created in this act for fiscal year 1998-99 funds to the Department of Community Colleges necessary to provide an average annual salary increase of three percent (3%), including funds for the employer's retirement and social security contributions, commencing July 1, 1998, for all permanent full-time community college institutional personnel supported by State funds. The State Board of Community Colleges shall establish guidelines for providing their salary increases to community college institutional personnel to include consideration of increases based on performance. Salary funds shall be used to provide an average annual salary increase of three percent (3%) to all full-time employees and part-time employees on a pro rata basis.

UNIVERSITY OF NORTH CAROLINA SYSTEM - EPA SALARY INCREASES

Section 14. (a) The Director of the Budget shall transfer to the Board of Governors of The University of North Carolina sufficient funds from the Reserve for Compensation Increase created in this act for fiscal year 1998-99 to provide an annual average salary increase of three percent (3%), including funds for the employer's retirement and social security contributions, commencing July 1, 1998, for all employees of The University of North Carolina, as well as employees other than teachers of the North Carolina School of Science and Mathematics, supported by State funds and whose salaries are exempt from the State Personnel Act (EPA). These funds shall be allocated to individuals according to the rules adopted by the Board of Governors, or the Board of Trustees of the North Carolina School of Science and Mathematics, as appropriate, and shall not be used for any purpose other than for salary increases and necessary employer contributions provided by this section. The Board of Governors shall

include consideration of increases based on performance in its adoption of rules for the allocation of funds for salary increases.

(b) The Director of the Budget shall transfer to the Board of Governors of The University of North Carolina sufficient funds from the Reserve for Salary Increases created in this act for fiscal year 1998-99 to provide an annual average salary increase comparable to that provided in this act for public school teachers, including funds for the employer's retirement and social security contributions, commencing July 1, 1998, for all teaching employees of the North Carolina School of Science and Mathematics, supported by State funds and whose salaries are exempt from the State Personnel Act (EPA). These funds shall be allocated to individuals according to the rules adopted by the Board of Trustees of the North Carolina School of Science and Mathematics and shall not be used for any purpose other than for salary increases and necessary employer contributions provided by this section.

SCHOOL CENTRAL OFFICE SALARIES

Section 15. (a) The following monthly salary ranges apply to assistant superintendents, associate superintendents, directors/coordinators, supervisors, and finance officers for the 1998-99 fiscal year, beginning July 1, 1998:

(1) School Administrator I:	\$2,846 - \$4,857
(2) School Administrator II:	\$3,021 - \$5,155
(3) School Administrator III:	\$3,206 - \$5,471
(4) School Administrator IV:	\$3,335 - \$5,692
(5) School Administrator V:	\$3,469 - \$5,923
(6) School Administrator VI:	\$3,681 - \$6,286
(7) School Administrator VII:	\$3,830 - \$6,540

The local board of education shall determine the appropriate category and placement for each assistant superintendent, associate superintendent, director/coordinator, supervisor, or finance officer within the salary ranges and within funds appropriated by the General Assembly for central office administrators and superintendents. The category in which an employee is placed shall be included in the contract of any employee hired on or after July 1, 1998.

(b) The following monthly salary ranges apply to public school superintendents for the 1998-99 fiscal year, beginning July 1, 1998:

(1) Superintendent I (Up to 2,500 ADM):	\$4,065 - \$6,941
(2) Superintendent II (2,501 - 5,000 ADM):	\$4,315 - \$7,364
(3) Superintendent III (5,001 - 10,000 ADM):	\$4,578 - \$7,815
(4) Superintendent IV (10,001 - 25,000 ADM):	\$4,859 - \$8,293
(5) Superintendent V (Over 25,000 ADM):	\$5,157 - \$8,801

The local board of education shall determine the appropriate category and placement for the superintendent based on the average daily membership of the local school administrative unit and within funds appropriated by the General Assembly for central office administrators and superintendents.

Notwithstanding the provisions of this subsection, a local board of education may pay an amount in excess of the applicable range to a

superintendent who is entitled to receive the higher amount under Section 2 of this act.

(c) Longevity pay for superintendents, assistant superintendents, associate superintendents, directors/coordinators, supervisors, and finance officers shall be as provided for State employees.

(d) Superintendents, assistant superintendents, associate superintendents, directors/coordinators, supervisors, and finance officers with certification based on academic preparation at the six-year degree level shall receive a salary supplement of one hundred twenty-six dollars (\$126.00) per month in addition to the compensation provided for pursuant to this section. Superintendents, assistant superintendents, associate superintendents, directors/coordinators, supervisors, and finance officers with certification based on academic preparation at the doctoral degree level shall receive a salary supplement of two hundred fifty-three dollars (\$253.00) per month in addition to the compensation provided for under this section.

(e) The State Board shall not permit local school administrative units to transfer State funds from other funding categories for salaries for public school central office administrators.

(f) The Director of the Budget shall transfer from the Reserve for Salary Increases created in this act for fiscal year 1998-99, beginning July 1, 1998, funds necessary to provide an average annual salary increase of three percent (3%), including funds for the employer's retirement and social security contributions, commencing July 1, 1998, for all permanent full-time personnel paid from the Central Office Allotment. The State Board of Education shall allocate these funds to local school administrative units. The local boards of education shall establish guidelines for providing their salary increases to these personnel.

NONCERTIFIED PERSONNEL SALARY FUNDS/TEACHER ASSISTANT SALARY FUNDS

Section 16. (a) The Director of the Budget may transfer from the Reserve for Compensation Increase created in this act for fiscal year 1998-99, commencing July 1, 1998, funds necessary to provide a salary increase of three percent (3%), including funds for the employer's retirement and social security contributions, commencing July 1, 1998, for all noncertified public school employees whose salaries are supported from the State's General Fund. Local boards of education shall increase the rates of pay for all such employees who were employed during fiscal year 1997-98 and who continue their employment for fiscal year 1998-99 by at least three percent (3%), commencing July 1, 1998. These funds shall not be used for any purpose other than for the salary increases and necessary employer contributions provided by this section.

The Director of the Budget may transfer from the Reserve for Compensation Increase created in this act for fiscal year 1998-99, beginning July 1, 1998, funds necessary to provide the salary increases for noncertified public school employees whose salaries are supported from the State's General Fund in accordance with the provisions of this section.

The State Board of Education may enact or create salary ranges for noncertified personnel to support increases of three percent (3%) for the 1998-99 fiscal year.

(b) G.S. 115C-12(16)b. reads as rewritten:

"b. Salary schedules for the following public school support personnel shall be adopted by the State Board of Education: school finance officer, office support personnel, teacher assistants, maintenance supervisors, custodial personnel, and transportation personnel. The Board shall classify these support positions in terms of uniform pay grades included in the salary schedule of the State Personnel Commission.

By the end of the third payroll period of the 1995-96 fiscal year, local boards of education shall place State-allotted office support personnel, teacher assistants, and custodial personnel on the salary schedule adopted by the State Board of Education so that the average salary paid is the State-allotted amount for the category. In placing employees on the salary schedule, the local board shall consider the education, training, and experience of each ~~employee~~, employee, including experience in other local school administrative units. It is the intent of the General Assembly that a local school administrative unit not fail to employ an employee who was employed for the prior school year in order to implement the provisions of this sub-subdivision. A local board of education is in compliance with this sub-subdivision if the average salary paid is at least ninety-five percent (95%) of the State-allotted amount for the category at the end of the third payroll period of the 1995-96 fiscal year, and at least ninety-eight percent (98%) of the State-allotted amount for the category at the end of the third payroll period of each subsequent fiscal year. The Department of Public Instruction shall provide technical assistance to local school administrative units regarding the implementation of this sub-subdivision."

(c) Subsection (b) of this section applies beginning with the 1999-2000 school year.

COMPENSATION BONUS/STATE EMPLOYEES/SCHOOL PERSONNEL

Section 17. (a) Any person:

- (1) Whose salary is set by or under this Act, other than Sections 1, 2, 3, 4, 5, 6(a), 7, 18(a); and 18(c), 18(d), 18(e), except that the exclusion of those under 18(c), 18(d), and 18(e) only applies to those whose salaries are set by the State Personnel Act; and
- (2) Who was, on July 1, 1998, a permanent officer or permanent employee shall receive not later than October of 1998 a compensation bonus of one percent (1%), except that:
 - a. The compensation bonus for persons subject to Section 13 of this act shall be an average of one percent (1%) per year and shall be allocated in accordance with guidelines adopted by the State Board of Community Colleges;

- b. The compensation bonus for persons subject to Section 14 of this act shall be an average of one percent (1%) per year and shall be allocated to individuals according to the rules adopted by the Board of Governors, or the Board of Trustees of the North Carolina School of Science and Mathematics, as appropriate; and
 - c. The guidelines and rules adopted under sub-subdivisions a. and b. of this subdivision may cover employees of those institutions whose first day of employment for the 1998-99 academic year came after July 1, 1998.
- (a1) Any person:
 - (1) Who did not receive a compensation bonus under subsection (a) of this section; and
 - (2) Who was employed on the first day of the 1998-99 school year as a permanent public school employee whose salary is set by or under Sections 13 through 16 of this act shall receive in the fourth payroll period of the 1998-99 school year a compensation bonus of one percent (1%) of the annual salary for that position.
 - (b) The annual salary on which the percentage compensation bonus is based is the annual salary in effect during the pay period in which the bonus is paid.
 - (c) The Director of the Budget shall transfer from the Reserve for Compensation Bonus provided by this act sufficient funds to implement this section.

MOST STATE EMPLOYEES/SALARY INCREASES

Section 18. (a) The salaries in effect June 30, 1998, of all permanent full-time State employees whose salaries are set in accordance with the State Personnel Act, and who are paid from the General Fund or the Highway Fund shall be increased, on or after July 1, 1998, unless otherwise provided by this act, pursuant to the Comprehensive Compensation System set forth in G.S. 126-7 and rules adopted by the State Personnel Commission, as follows:

- (1) Career growth recognition awards in the amount of two percent (2%);
- (2) A cost-of-living adjustment in the amount of one percent (1%); and
- (3) A performance bonus in the amount of one percent (1%).

Notwithstanding G.S. 126-7(4a), any permanent full-time State employee whose salary is set in accordance with the State Personnel Act and whose salary is at the top of the salary range or within two percent (2%) of the top of the salary range shall receive a one-time bonus of two percent (2%) less the career growth recognition award the employee receives. The employee shall receive the career growth bonus at the time the employee is eligible for the career growth recognition award, but not earlier than July 1, 1998.

- (a1) It is the intent of the General Assembly that the annual career growth recognition award in the amount of two percent (2%) provided by

G.S. 126-7(c)(4a) shall be part of the continuation budget for each fiscal year of the 1999-2001 biennium.

(b) Except as otherwise provided in this act, salaries in effect June 30, 1998, for permanent full-time State officials and persons in exempt positions that are recommended by the Governor or the Governor and the Advisory Budget Commission and set by the General Assembly shall be increased by three percent (3%), commencing July 1, 1998.

(c) The salaries in effect June 30, 1998, for all permanent part-time State employees shall be increased on and after July 1, 1998, by pro rata amounts of the salary increases provided for permanent full-time employees covered under subsection (a) of this section.

(d) The Director of the Budget may allocate out of special operating funds or from other sources of the employing agency, except tax revenues, sufficient funds to allow a salary increase on and after July 1, 1998, in accordance with subsections (a), (b), or (c) of this section, including funds for the employer's retirement and social security contributions, of the permanent full-time and part-time employees of the agency.

(e) Within regular Executive Budget Act procedures as limited by this act, all State agencies and departments may increase on an equitable basis the rate of pay of temporary and permanent hourly State employees, subject to availability of funds in the particular agency or department, by pro rata amounts the salary increase provided for permanent full-time employees covered by the provisions of subsection (a) of this section, commencing July 1, 1998.

(f) No State employee or officer shall receive a merit increment during the 1998-99 fiscal year except as otherwise provided by this act.

ALL STATE-SUPPORTED PERSONNEL

Section 19. (a) Salaries and related benefits for positions that are funded partially from the General Fund or Highway Fund and partially from sources other than the General Fund or Highway Fund shall be increased from the General Fund or Highway Fund appropriation only to the extent of the proportionate part of the salaries paid from the General Fund or Highway Fund.

(b) The granting of the salary increases under this act does not affect the status of eligibility for salary increments for which employees may be eligible unless otherwise required by this act.

(c) The salary increases provided in this act are to be effective July 1, 1998, do not apply to persons separated from State service due to resignation, dismissal, reduction in force, death, or retirement, whose last workday is prior to July 1, 1998, or to employees involved in final written disciplinary procedures. The employee shall receive the increase on a current basis when the final written disciplinary procedure is resolved.

Payroll checks issued to employees after July 1, 1998, which represent payment of services provided prior to July 1, 1998, shall not be eligible for salary increases provided for in this act. This subsection shall apply to all employees, subject to or exempt from the State Personnel Act, paid from State funds, including public schools, community colleges, and The University of North Carolina.

(d) The Director of the Budget shall transfer from the Reserve for Compensation Increase in this act for fiscal year 1998-99 all funds necessary for the salary increases provided by this act, including funds for the employer's retirement and social security contributions.

(e) The Director of the Budget shall transfer from the Reserve for Compensation Increase in this act for fiscal year 1998-99 one million four hundred thousand dollars (\$1,400,000) to The University of North Carolina Board of Governors for allocation to the Agricultural Research and Cooperative Extension budget codes of North Carolina State University in order to provide sufficient operating support for those programs.

(f) Nothing in this act authorizes the transfer of funds between the General Fund and the Highway Fund for salary increases.

SALARY ADJUSTMENT FUND

Section 20. Any remaining appropriations for legislative salary increases not required for that purpose may be used to supplement the Salary Adjustment Fund. These funds shall first be used to provide reclassifications of those positions already approved by the Office of State Personnel. The Office of State Budget and Management shall report to the Joint Legislative Commission on Governmental Operations prior to the allocation of these funds.

RETIREE COLAS AND FORMULA INCREASE

Section 21. (a) G.S. 135-5 is amended by adding a new subsection to read:

"(eee) From and after July 1, 1998, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1997, shall be increased by two and one-half percent (2.5%) of the allowance payable on June 1, 1998, in accordance with G.S. 135-5(o). Furthermore, from and after July 1, 1998, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1997, but before June 30, 1998, shall be increased by a prorated amount of two and one-half percent (2.5%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1997, and June 30, 1998."

(b) G.S. 135-65 is amended by adding a new subsection to read:

"(s) From and after July 1, 1998, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1997, shall be increased by two and one-half percent (2.5%) of the allowance payable on June 1, 1998. Furthermore, from and after July 1, 1998, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1997, but before June 30, 1998, shall be increased by a prorated amount of two and one-half percent (2.5%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1997, and June 30, 1998."

(c) G.S. 120-4.22A is amended by adding a new subsection to read:

"(m) In accordance with subsection (a) of this section, from and after July 1, 1998, the retirement allowance to or on account of beneficiaries

whose retirement commenced on or before January 1, 1998, shall be increased by two and one-half percent (2.5%) of the allowance payable on June 1, 1998. Furthermore, from and after July 1, 1998, the retirement allowance to or on account of beneficiaries whose retirement commenced after January 1, 1998, but before June 30, 1998, shall be increased by a prorated amount of two and one-half percent (2.5%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between January 1, 1998, and June 30, 1998."

(d) G.S. 128-27 is amended by adding a new subsection to read:

"(uu) From and after July 1, 1998, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1997, shall be increased by two and one-half percent (2.5%) of the allowance payable on June 1, 1998, in accordance with subsection (k) of this section. Furthermore, from and after July 1, 1998, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1997, but before June 30, 1998, shall be increased by a prorated amount of two and one-half percent (2.5%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1997, and June 30, 1998."

(e) G.S. 128-27(b16) reads as rewritten:

"(b16) Service Retirement Allowance of Member Retiring on or after July 1, 1997, but before July 1, 1998. -- Upon retirement from service in accordance with subsection (a) or (a1) above, on or after July 1, 1997, but before July 1, 1998, a member shall receive the following service retirement allowance:

- (1) A member who is a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:
 - a. If the member's service retirement date occurs on or after his 55th birthday, and completion of five years of creditable service as a law enforcement officer, or after the completion of 30 years of creditable service, the allowance shall be equal to one and seventy-six hundredths percent (1.76%) of his average final compensation, multiplied by the number of years of his creditable service.
 - b. If the member's service retirement date occurs on or after his 50th birthday and before his 55th birthday with 15 or more years of creditable service as a law enforcement officer and prior to the completion of 30 years of creditable service, his retirement allowance shall be equal to the greater of:
 1. The service retirement allowance payable under G.S. 128-27(b16)(1)a. reduced by one-third of one percent ($1/3$ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following the month the member would have attained his 55th birthday; or

2. The service retirement allowance as computed under G.S. 128-27(b16)(1)a. reduced by five percent (5%) times the difference between 30 years and his creditable service at retirement.
- (2) A member who is not a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:
- a. If the member's service retirement date occurs on or after his 65th birthday upon the completion of five years of creditable service or after the completion of 30 years of creditable service or on or after his 60th birthday upon the completion of 25 years of creditable service, the allowance shall be equal to one and seventy-six hundredths percent (1.76%) of average final compensation, multiplied by the number of years of creditable service.
 - b. If the member's service retirement date occurs after his 60th birthday and before his 65th birthday and prior to his completion of 25 years or more of creditable service, his retirement allowance shall be computed as in G.S. 128-27(b16)(2)a. but shall be reduced by one-quarter of one percent ($1/4$ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his 65th birthday.
 - c. If the member's early service retirement date occurs on or after his 50th birthday and before his 60th birthday and after completion of 20 years of creditable service but prior to the completion of 30 years of creditable service, his early service retirement allowance shall be equal to the greater of:
 1. The service retirement allowance as computed under G.S. 128-27(b16)(2)a. but reduced by the sum of five-twelfths of one percent ($5/12$ of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following the month the member would have attained his 60th birthday, plus one-quarter of one percent ($1/4$ of 1%) thereof for each month by which his 60th birthday precedes the first day of the month coincident with or next following his 65th birthday; or
 2. The service retirement allowance as computed under G.S. 128-27(b16)(2)a. reduced by five percent (5%) times the difference between 30 years and his creditable service at retirement; or
 3. If the member's creditable service commenced prior to July 1, 1995, the service retirement allowance equal to the actuarial equivalent of the allowance payable at the age of 60 years as computed in G.S. 128-27(b16)(2)b.
 - d. Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1965, shall not receive less than the benefit provided by G.S. 128-27(b)."
- (f) G.S. 128-27 is amended by adding a new subsection to read:

"(b17) Service Retirement Allowance of Member Retiring on or After July 1, 1998. -- Upon retirement from service in accordance with subsection (a) or (a1) above, on or after July 1, 1998, a member shall receive the following service retirement allowance:

- (1) A member who is a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:
 - a. If the member's service retirement date occurs on or after his 55th birthday and completion of five years of creditable service as a law enforcement officer, or after the completion of 30 years of creditable service, the allowance shall be equal to one and seventy-seven hundredths percent (1.77%) of his average final compensation, multiplied by the number of years of his creditable service.
 - b. If the member's service retirement date occurs on or after his 50th birthday and before his 55th birthday with 15 or more years of creditable service as a law enforcement officer and prior to the completion of 30 years of creditable service, his retirement allowance shall be equal to the greater of:
 1. The service retirement allowance payable under G.S. 128-27(b17)(1)a. reduced by one-third of one percent (1/3 of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following the month the member would have attained his 55th birthday; or
 2. The service retirement allowance as computed under G.S. 128-27(b17)(1)a. reduced by five percent (5%) times the difference between 30 years and his creditable service at retirement.
- (2) A member who is not a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:
 - a. If the member's service retirement date occurs on or after his 65th birthday upon the completion of five years of creditable service or after the completion of 30 years of creditable service or on or after his 60th birthday upon the completion of 25 years of creditable service, the allowance shall be equal to one and seventy-seven hundredths percent (1.77%) of average final compensation, multiplied by the number of years of creditable service.
 - b. If the member's service retirement date occurs after his 60th birthday and before his 65th birthday and prior to his completion of 25 years or more of creditable service, his retirement allowance shall be computed as in G.S. 128-27(b17)(2)a. but shall be reduced by one-quarter of one percent (1/4 of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following his 65th birthday.

- c. If the member's early service retirement date occurs on or after his 50th birthday and before his 60th birthday and after completion of 20 years of creditable service but prior to the completion of 30 years of creditable service, his early service retirement allowance shall be equal to the greater of:
1. The service retirement allowance as computed under G.S. 128-27(b17)(2)a. but reduced by the sum of five-twelfths of one percent (5/12 of 1%) thereof for each month by which his retirement date precedes the first day of the month coincident with or next following the month the member would have attained his 60th birthday, plus one-quarter of one percent (1/4 of 1%) thereof for each month by which his 60th birthday precedes the first day of the month coincident with or next following his 65th birthday; or
 2. The service retirement allowance as computed under G.S. 128-27(b17)(2)a. reduced by five percent (5%) times the difference between 30 years and his creditable service at retirement; or
 3. If the member's creditable service commenced prior to July 1, 1995, the service retirement allowance equal to the actuarial equivalent of the allowance payable at the age of 60 years as computed in G.S. 128-27(b17)(2)b.
- d. Notwithstanding the foregoing provisions, any member whose creditable service commenced prior to July 1, 1965, shall not receive less than the benefit provided by G.S. 128-27(b)."

(g) G.S. 128-27(m) reads as rewritten:

"(m) Survivor's Alternate Benefit. -- Upon the death of a member in service, the principal beneficiary designated to receive a return of accumulated contributions shall have the right to elect to receive in lieu thereof the reduced retirement allowance provided by Option two of subsection (g) above computed by assuming that the member had retired on the first day of the month following the date of his death, provided that all three of the following conditions apply:

- (1) a. The member had attained such age and/or creditable service to be eligible to commence retirement with an early or service retirement allowance, or
- b. The member had obtained 20 years of creditable service in which case the retirement allowance shall be computed in accordance with ~~G.S. 128-27(b16)(1)b.~~ G.S. 128-27(b17)(1)b. or ~~G.S. 128-27(b16)(2)c.,~~ G.S. 128-27(b17)(2)c., notwithstanding the requirement of obtaining age 50.
- (2) The member had designated as the principal beneficiary to receive a return of his accumulated contributions one and only one person who is living at the time of his death.
- (3) The member had not instructed the Board of Trustees in writing that he did not wish the provisions of this subsection apply.

For the purpose of this benefit, a member is considered to be in service at the date of his death if his death occurs within 180 days from the last day of his actual service. The last day of actual service shall be determined as

provided in subsection (l) of this section. Upon the death of a member in service, the surviving spouse may make all purchases for creditable service as provided for under this Chapter for which the member had made application in writing prior to the date of death, provided that the date of death occurred prior to or within 60 days after notification of the cost to make the purchase."

(h) G.S. 128-27 is amended by adding a new subsection to read:

"(vv) Increase in Allowance as to Persons on Retirement Rolls as of June 1, 1998. -- From and after July 1, 1998, the retirement allowance to or on account of beneficiaries on the retirement rolls as of June 1, 1998, shall be increased by six-tenths of one percent (0.6%) of the allowance payable on June 1, 1998. This allowance shall be calculated on the allowance payable and in effect on June 30, 1998, so as not to be compounded on any other increase payable under subsection (k) of this section or otherwise granted by act of the 1997 General Assembly."

(i) This section becomes effective July 1, 1998.

EMPLOYER CONTRIBUTION RATES

Section 22. (a) Section 33.23(c) of S.L. 1997-443 reads as rewritten:

"(c) Effective July 1, 1998, the State's employer contribution rates budgeted for retirement and related benefits as a percentage of covered salaries for the 1998-99 fiscal year are (i) ~~ten and eighty-three hundredths percent (10.83%)~~ ten and one-tenth percent (10.10%) - Teachers and State Employees; (ii) ~~fifteen and eighty-three hundredths percent (15.83%)~~ fifteen and one-tenth percent (15.10%) - State Law Enforcement Officers; (iii) ~~nine and thirty-six hundredths percent (9.36%)~~ - University Employees' Optional Retirement Program; (iv) ~~twenty-two and sixty-five hundredths percent (22.65%)~~ eighteen and ninety-seven hundredths percent (18.97%) - Consolidated Judicial Retirement System; and (v) twenty-four and fifty-eight hundredths percent (24.58%) - Legislative Retirement System. Each of the foregoing contribution rates includes two percent (2%) for hospital and medical benefits. The rate for State Law Enforcement Officers includes five percent (5%) for the Supplemental Retirement Income Plan. The rates for Teachers and State Employees, State Law Enforcement Officers, and for the University Employees' Optional Retirement Program include fifty-two hundredths percent (0.52%) for the Disability Income Plan."

(b) The change provided by subsection (a) of this section is for the 1998-99 fiscal year only. It is the intent of the General Assembly that the rates provided by Section 33.23(c) of S.L. 1997-443 shall apply for the 1999-2001 biennium.

(c) Required employer salary-related contributions for employees whose salaries are paid from department, office, institution, or agency receipts shall be paid from the same source as the source of the employees' salary. If an employee's salary is paid in part from the General Fund or Highway Fund and in part from department, office, institution, or agency receipts, required employer salary-related contributions may be paid from the General Fund or Highway Fund only to the extent of the proportionate part paid from the General Fund or Highway Fund in support of the salary of the employee, and the remainder of the employer's requirements shall be

paid from the source that supplies the remainder of the employee's salary. The requirements of this section as to source of payment are also applicable to payments on behalf of the employee for hospital-medical benefits, longevity pay, unemployment compensation, accumulated leave, workers' compensation, severance pay, separation allowances, and applicable disability income and disability salary continuation benefits.

CURRENT OPERATIONS/GENERAL FUND

Section 23. Appropriations from the General Fund of the State for the maintenance of the State departments, institutions, and agencies, and for other purposes as enumerated are made for the fiscal year ending June 30, 1999, according to the schedule that follows. Amounts set out in brackets are reductions from General Fund appropriations for the 1998-99 fiscal year.

<u>Current Operations - General Fund</u>	<u>1998-99</u>
Reserve for Compensation Increase	343,271,828
Reserve for 1% Compensation Bonus	43,171,138
Retirement Rate Adjustment	
Teachers and State Employees Retirement System	(42,909,070)
Consolidated Judicial Retirement System	(1,472,800)
TOTAL	\$342,061,096

CURRENT OPERATIONS AND EXPANSION/HIGHWAY FUND

Section 24. Appropriations from the Highway Fund of the State for the maintenance and operation of the Department of Transportation, and for other purposes as enumerated, are made for the fiscal year ending June 30, 1999, according to the schedule that follows. Amounts set out in brackets are reductions from Highway Fund appropriations for the 1998-99 fiscal year.

<u>Current Operations - Highway Fund</u>	<u>1998-99</u>
Reserve for Compensation Increase	12,000,000
Reserve for 1% Compensation Bonus	4,000,000
Retirement Rate Adjustment	
Teachers and State Employees Retirement System	(3,612,248)
TOTAL	\$12,387,752

SPECIAL FUNDS, FEDERAL FUNDS, AND DEPARTMENTAL RECEIPTS/AUTHORIZATION FOR EXPENDITURES

Section 25. There is appropriated out of the cash balances, federal receipts, and departmental receipts available to each department, sufficient amounts to implement the provisions of this act. All these cash balances,

federal receipts, and departmental receipts shall be expended and reported in accordance with provisions of the Executive Budget Act, except as otherwise provided by statute, and shall be expended at the level authorized by the General Assembly.

EFFECTIVE DATE

Section 26. Except as otherwise provided, this act becomes effective July 1, 1998.

In the General Assembly read three times and ratified this the 24th day of September, 1998.

Became law upon approval of the Governor at 3:30 p.m. on the 24th day of September, 1998.

H.B. 1529

SESSION LAW 1998-154

AN ACT TO PROVIDE FOR A HORSE PROMOTION ASSESSMENT.

The General Assembly of North Carolina enacts:

Section 1. Chapter 106 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 69.

"Horse Industry Promotion Act.

"§ 106-820. Title.

This Article may be cited as the Horse Industry Promotion Act.

"§ 106-821. Findings.

The General Assembly finds that the horse industry makes an important contribution to the State's economy, and that it is appropriate for the State to provide a means for horse owners to voluntarily assess themselves in order to provide funds to promote the interests of the horse industry.

"§ 106-822. Definitions.

As used in this Article:

- (1) 'Commercial horse feed' means any commercial feed, as defined in G.S. 106-284.33, labeled for equine use.
- (2) 'Council' means the North Carolina Horse Council.
- (3) 'Department' means the Department of Agriculture and Consumer Services.
- (4) 'Equine' means a horse, pony, mule, donkey, or hinny.
- (5) 'Horse owner' means a person who (i) is a North Carolina resident and (ii) owns or leases an equine.

"§ 106-823. Referendum.

(a) The Council may conduct a referendum among horse owners upon the question of whether an assessment shall be levied consistent with this Article.

(b) The Council shall determine all of the following:

- (1) The amount of the proposed assessment, not to exceed two dollars (\$2.00) per ton of commercial horse feed.
- (2) The period for which the assessment shall be levied, not to exceed three years.
- (3) The time and place of the referendum.

(4) Procedures for conducting the referendum and counting votes.

(5) Any other matters pertaining to the referendum.

(c) The amount of the proposed assessment and the method of collection shall be set forth on the ballot.

(d) All horse owners are eligible to vote in the referendum. The Council shall send press releases about the referendum to at least 10 daily and 10 weekly or biweekly newspapers having general circulation in a county in the State, and to any trade journals deemed appropriate by the Council. Notice of the referendum also shall be posted in every place the Council identifies as selling commercial horse feed. Any questions concerning eligibility to vote shall be resolved by the board of directors of the Council.

"§ 106-824. Majority vote required; collection of assessment.

(a) The assessment shall not be collected unless a majority of the votes cast in the referendum are in favor of the assessment. If a majority of the votes cast in the referendum are in favor of the assessment, the Department shall notify all commercial horse feed manufacturers and distributors of the assessment. The assessment shall apply to all commercial horse feed subject to the provisions of G.S. 106-284.40(b), and the assessment shall be remitted to the Department with the inspection fee imposed by G.S. 106-284.40. The Department shall provide forms for reporting the assessment. Persons who purchase commercial horse feed on which the assessment has not been paid shall report these purchases and pay the assessment to the Department.

(b) The Council may bring an action to collect unpaid assessments against any feed manufacturer or distributor who fails to pay the assessment.

"§ 106-825. Use of funds; refunds.

(a) The Department shall remit all funds collected under this Article to the Council at least quarterly. The Council shall use these funds to promote the interests of the horse industry and may use these funds for those administrative expenses that are reasonably necessary to carry out this function.

(b) Any person who purchases commercial horse feed upon which the assessment has been paid shall have the right to receive a refund of the assessment by making demand in writing to the Council within one year of purchase of the feed. This demand shall be accompanied by proof of purchase satisfactory to the Council."

Section 2. G.S. 106-550 reads as rewritten:

"§ 106-550. Policy as to promotion of use of, and markets for, farm products.

It is declared to be in the interest of the public welfare that the North Carolina farmers who are producers of livestock, poultry, field crops and other agricultural products, including cattle, sheep, broilers, turkeys, commercial eggs, peanuts, cotton, potatoes, sweet potatoes, peaches, apples, berries, vegetables and other fruits of all kinds, as well as bulbs and flowers and other agricultural products having a domestic or foreign market, shall be permitted and encouraged to act jointly and in cooperation with growers, handlers, dealers and processors of such products in promoting and stimulating, by advertising and other methods, the increased production, use and sale, domestic and foreign, of any and all of such agricultural commodities. The provisions of this Article, however, shall not include the

agricultural products of tobacco, strawberries, strawberry plants, ~~or~~ porcine animals, or equines, with respect to which separate provisions have been made."

Section 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 16th day of September, 1998.

Became law upon approval of the Governor at 3:32 p.m. on the 24th day of September, 1998.

H.B. 1082

SESSION LAW 1998-155

AN ACT TO AUTHORIZE THE DIVISION OF MOTOR VEHICLES TO ISSUE A NATIVE AMERICAN REGISTRATION PLATE, AND TO ALLOW AN INCREASE IN MEMBERS ON THE NORTH CAROLINA INDIAN HOUSING AUTHORITY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-79.4(b) is amended by adding a new subdivision to read:

"(28a) Native American. -- Issuable to the registered owner of a motor vehicle. The plate may bear a phrase or an insignia representing Native Americans. The Division must receive 300 or more applications for the plate before it may be developed."

Section 2. G.S. 157-68 reads as rewritten:

"§ 157-68. *Commissioners of Authority.*

The Authority shall consist of not less than five nor more than ~~nine~~ 15 commissioners (the number to be set by the North Carolina State Commission of Indian Affairs) who shall be appointed by the Governor, after receiving nominations from the North Carolina State Commission of Indian Affairs. For each vacancy, the Governor must appoint one person from a list of two eligible persons so nominated. Commissioners shall be selected from the major groups of North Carolina Indians that elect members to the North Carolina State Commission of Indian Affairs under G.S. 143B-407. No person shall be barred from serving as a commissioner because he is a tenant or home buyer in an Indian housing project."

Section 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 15th day of September, 1998.

Became law upon approval of the Governor at 3:34 p.m. on the 24th day of September, 1998.

H.B. 349

SESSION LAW 1998-156

AN ACT TO EXTEND THE TERRITORIAL JURISDICTION OF THE LEGISLATIVE SERVICES COMMISSION TO ALL OF JONES, WILMINGTON, AND SALISBURY STREETS PROXIMATE TO THE STATE LEGISLATIVE BUILDING, AND TO THE BRICK

WALKWAY PROXIMATE TO THE LEGISLATIVE OFFICE BUILDING.

The General Assembly of North Carolina enacts:

Section 1. G.S. 120-32.1(d) reads as rewritten:

"(d) For the purposes of this section, the term "State legislative buildings and grounds" means:

(1) At all times:

- a. The State Legislative Building;
 - a1. ~~The areas between the outer walls of the State Legislative Building and the near curblin~~e of those sections of Jones, Wilmington, and Salisbury Streets which border land on which it is situated;
 - a2. ~~The area~~areas between the outer walls of the State Legislative Building and the far curbline of those sections of Jones, Wilmington, Salisbury, and Lane Streets that border that section of Lane Street which borders the land on which it is situated;
 - b. ~~The Legislative Office Building~~Building, its garden area and outer stairway, and the areas between its outer walls and the near curbline of those sections of Lane and Salisbury Streets that border the land on which it is situated;
 - c. Any State-owned parking lot which is leased to the General Assembly; and
 - d. The bridge between the State Legislative Building and the State Governmental ~~Mall~~Mall; and
 - e. A portion of the brick sidewalk surface area of the State Government Mall, described as follows: beginning at the northeast corner of the Legislative Office Building, thence east across the brick sidewalk to the inner edge of the sidewalk adjacent to the grassy area of the Mall, thence south along the inner edge of the sidewalk to the southwest outer corner of the Mall water fountain, thence east along the southern outer edge of the fountain to a point north of the northeast corner of the pedestrian surface of the Lane Street pedestrian bridge, thence south from that point to the northeast corner of the pedestrian surface of the bridge, thence west along the southern edge of the brick sidewalk area of the Mall to the southeast corner of the Legislative Office Building, thence north along the east wall of the Legislative Office Building, to the point of beginning.
- (2) ~~In addition, the surface area to the far curblin~~e of those sections of Jones, Wilmington, and Salisbury Streets which border the land on which the State Legislative Building is situated:
- a. ~~When the General Assembly is in regular or extra session; and~~
 - b. ~~On other days on which one or more standing committees of either or both houses of the General Assembly are meeting and the Legislative Services Officer determines that additional~~

~~parking is needed for the functioning of the General Assembly and files notice of the committee's or committees' meetings and his finding that additional parking is needed in the office of the Secretary of State and that of Clerk of the Superior Court of Wake County."~~

Section 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 15th day of September, 1998.

Became law upon approval of the Governor at 3:36 p.m. on the 24th day of September, 1998.

H.B. 577

SESSION LAW 1998-157

AN ACT TO STRENGTHEN THE REGISTRATION REQUIREMENT FOR FORESTERS.

The General Assembly of North Carolina enacts:

Section 1. Chapter 89B of the General Statutes reads as rewritten:

"Chapter 89B.

"Foresters.

"§ 89B-1. *General provisions.*

(a) ~~No person shall, in connection with his name or otherwise, assume, shall use or advertise any title or description tending to the designation 'forester', 'registered forester', or any other descriptive terms that include the words 'forester' or 'registered forester' and that directly convey convey, directly or indirectly, the impression that he the person is a registered forester without first having been registered as a registered forester as hereinafter provided, under this Chapter.~~

(b) ~~It is the intention of this~~ This Chapter to benefit and protect benefits and protects the public by improving the standards ~~relative to~~ for the practice of professional forestry in North Carolina.

"§ 89B-2. *Definitions.*

As used in this Chapter:

- (1) 'Board' ~~shall mean~~ means the State Board of Registration for Foresters, provided for by this Chapter.
- (2) 'Forester' means a person who by reason of his special knowledge and training in natural sciences, mathematics, silviculture, forest protection, forest mensuration, forest management, forest economics, and forest utilization is qualified to engage in the practice of ~~forestry as hereinafter defined, forestry.~~
- (2a) 'Forestry' means the professional practice embracing the science, business, and the art of creating, conserving, and managing forests and forestlands for the sustained use and enjoyment of their resources, material, or other forest produce.
- (3) ~~"Practicing"~~ 'Practice of forestry' means giving rendering professional forestry services, including but not limited to, consultation, investigation, evaluation, education, planning, or responsible supervision of any other forestry activities requiring

knowledge, ~~and training in and experience of~~ training, and experience in forestry principles and techniques.

- (4) 'Registered forester' means a person who has been registered pursuant to this Chapter.
- (5) 'Consulting forester' means a ~~person~~ registered forester who:
- ~~a. Is registered by the State Board of Registration for Foresters;~~
 - ~~b. Is a technically educated professional forester who is a graduate of a forestry curriculum of a college or university and who holds a bachelor's or higher degree in forestry; or has shown equivalent knowledge by passing the written examination administered by the State Board of Registration for Foresters as provided in this Chapter;~~
 - ~~c. Is governed by the Code of Ethics of the Society of American Foresters;~~
 - ~~d. a. Is competent to practice forest management, appraisal, development, marketing, protection, and utilization for the benefit of the general public on a fee, contractual, or contingency basis;~~
 - ~~e. b. Has not engaged in any practice that constitutes a conflict of interest or in any way diminishes his ability to represent the best interests of his clients; and~~
 - ~~f. c. Has filed annually an affidavit with the State Board of Registration of Foresters attesting to his compliance with the conditions of this Chapter.~~ Board in accordance with G.S. 89B-14(b).
- (6) 'Urban forester' means a person who engages in the practice of forestry in an urban setting that involves municipal ownership, homesteads, parks and woodlots, and similar urban properties.

"§ 89B-3. *State Board of Registration for Foresters; appointment of members; terms.*

(a) A State Board of Registration for Foresters is created to administer the provisions of this Chapter. The Board shall have five members as follows:

- (1) Four duly practicing registered foresters, at least three of whom hold ~~at a minimum a bachelor's~~ a bachelors or higher degree from an accredited forestry school, and
- (2) One public member.

Each member shall be appointed by the Governor for a three-year term. No member may serve more than two complete consecutive terms.

(b) Each member of the Board shall be a citizen of the United States and a resident of North Carolina.

(c) Vacancies in the membership of the Board shall be filled by appointment by the Governor for the unexpired term.

(d) The Board shall elect annually the following officers: a chairman, and a vice-chairman, who shall be members of the Board, and a secretary who may be a member of the Board. A quorum of the Board shall consist of not less than three voting members of the Board.

"§ 89B-4. *Compensation and expenses of Board members.*

Each member of the Board shall receive per diem and allowances as provided ~~with respect to occupational licensing boards~~ by G.S. 93B-5.

"§ 89B-5. Organization and meetings of the Board.

The Board shall ~~meet on call of the Governor within 30 days after its initial members are appointed, and thereafter shall hold at least two regular meetings at least twice each year. In addition, special~~ Special meetings may be held ~~at such time and place as in accordance with the bylaws~~ rules of the Board may provide. Board.

"§ 89B-6. Powers of the Board.

The Board may ~~make all reasonable and necessary~~ adopt rules in accordance with Chapter 150B of the General Statutes for the proper performance of its duties and the regulation of the proceedings before it. The Board shall adopt an official seal. Any member of the Board may administer oaths or affirmations to witnesses appearing before the Board.

The Board may establish fees, subject to the maximum amounts prescribed by this Chapter.

"§ 89B-7. Receipts and disbursements.

The secretary of the Board shall receive and account for all moneys derived under ~~the provision of this Chapter, and shall keep such these~~ moneys in a separate fund ~~to be known as the 'Registered Foresters' Fund.'~~ Moneys in the ~~aforsaid fund~~ Fund shall be expended to carry out the purposes of the Board. The secretary of the Board shall give surety bond to the Board in ~~such sum as the Board may determine, the premium of which shall be regarded as an amount determined by the Board. The premium for the surety bond is a proper expense of the Board and shall be paid from the Registered Foresters' Fund.~~

The Board may employ and fix the compensation of necessary clerical and other assistants. The compensation of ~~such these~~ assistants shall be paid out of the Registered Foresters' Fund.

"§ 89B-8. Records and reports.

The Board shall keep a record of its proceedings and a register of all applications for registration. The register shall show the name, age and residence of each applicant; the date of the application; the applicant's place of business; his the applicant's educational and other qualifications; whether or not examination was required; whether the application was rejected or registration was granted; the date of action by the Board; and other information as may be deemed necessary by the Board. ~~Annually on Each~~ July 1 the Board shall submit to the Governor a report of its transactions of the preceding year.

"§ 89B-9. General requirements for registration.

(a) ~~Applicants~~ An applicant for registration shall be registered upon satisfactory ~~showing proof~~ proof to the Board that the ~~applicant; applicant is of good moral character and meets one of the following requirements:~~

(1) ~~Is of good moral character, and~~

(2) ~~Has either:~~

(1)a. Graduated Graduation with a bachelor's bachelors or higher degree in a forestry curriculum from a school or college of forestry approved by the Board Board, passage of a

- comprehensive written examination, and ~~has had the completion~~ of two or more years' experience in forestry; or forestry.
- (2)b. ~~Passed~~ Passage of a comprehensive written examination designed to show knowledge approximating that obtained through graduation from a four-year curriculum in forestry in a university or college approved by the Board, Board and ~~has a record the completion of five six~~ or more years of active practice in forestry work of a character satisfactory to the Board; ~~provided that five or more years shall be immediately prior to the application; or application.~~ The work must be of a character acceptable to the Board. Graduation with an Associate Applied Science degree in a forestry curriculum in a school or college approved by the Board is the equivalent of one year of experience. The completion of the junior year of a curriculum in forestry in a college or school approved by the Board is the equivalent of two years of experience. The completion of the senior year of a curriculum in forestry in a school or college approved by the Board is equivalent to three years of experience.
- (3)c. ~~Is a resident of North Carolina and has engaged in the practice of forestry for five years immediately prior to July 1, 1975, and has held himself out in writing and has been employed as a practicing forester for that period. Such person shall make written application under oath of the Board to be registered on or before June 30, 1976, and thereafter no person shall be registered under this subparagraph. Registration in good standing as a registered forester with the Board as of January 1, 1999.~~
- (4) Practice of urban forestry for six years immediately prior to January 1, 1999, if the applicant meets all of the following conditions:
- a. The applicant is a North Carolina resident at the time of filing the application.
 - b. The applicant practiced under the title 'urban forester' during the six-year period.
 - c. The applicant, prior to June 30, 1999, applies to the Board for registration and submits an affidavit under oath to the Board showing experience and education equivalent to that of a forester, as determined by the Board.

(b) Registration shall be determined upon the basis of individual personal qualification. No firm, company, partnership, corporation or public agency shall be registered as a registered forester.

(b1) The Board may issue a forester-in-training certificate to an applicant who has completed the educational requirements under subdivision (a)(1) of this section.

(c) A nonresident of North Carolina may become a registered forester under this Chapter by complying with its terms, and by filing a consent as to service of process and pleadings upon the Board secretary. In connection with the practice of forestry by such nonresident in North Carolina, the consent as to service of process and pleadings shall be held binding and

valid in all courts, as if due service had been made personally upon said nonresident by the Board, when such process has been served upon the Board secretary.

(d) ~~A person not a resident of North Carolina, or one who has recently become a resident thereof, may become registered under this Chapter upon written application to the Board, provided: (i) Such person is legally registered as a registered forester in his own state or country and has submitted evidence to the Board that he is so registered; and (ii) the state or country in which he is so registered observes these same rules of reciprocity in regard to persons registered under the provisions of this Chapter.~~ nonresident or person who has moved to North Carolina recently and who is registered as a registered forester in another jurisdiction may be registered under this Chapter, by written application to the Board, if that jurisdiction provides for the same or substantially the same registration for North Carolina foresters who are registered under this Chapter.

(e) A nonresident of North Carolina may use the term 'registered forester' or other titles otherwise prohibited by this Chapter in North Carolina without becoming registered under this Chapter provided that he is if registered in another state which will reciprocate with the provision of this Chapter.

"§ 89B-10. *Application and registration fees.*

(a) Applications for registration shall be made on forms prescribed and furnished by the Board. The application fee for a certificate of registration as a registered forester shall be fifteen dollars (\$15.00), in an amount determined by the Board, not to exceed fifty dollars (\$50.00), which shall accompany the application. An additional twenty dollars (\$20.00) fee, not to exceed forty dollars (\$40.00), shall be paid upon issuance of the certificate of registration. Should the An applicant fail or refuse to that does not remit the certificate fee within 30 days after being notified in the usual manner that the applicant has successfully qualified, he of qualification forfeits the right to have the certificate so issued and said issued, and the applicant may be required again to submit an original application fee therefor, fee. Should If the Board deny the issuance of denies a certificate of registration to any applicant, the initial application fee deposited by the applicant shall be retained by the Board.

(b) It is unlawful for any person to provide false or forged information to the Board or a member of the Board in obtaining a certificate of registration.

"§ 89B-11. *Expiration and renewals; continuing education.*

(a) Registrations shall expire on the last day of June following issuance or renewal and shall become invalid after that date unless renewed. It shall be the duty of the The secretary of the Board to notify, at his last registered address, shall notify every person registered under this Chapter Chapter, at the person's last registered address, of the date of the expiration of his registration and the amount of fee which shall be required for its renewal for one year. Such The notices shall be mailed at least 30 days in advance of prior to the expiration date of such the registrations. The annual renewal fee for certificates shall be twenty dollars (\$20.00), in an amount established

by the Board, not to exceed fifty dollars (\$50.00). The fee for issuance of replacement certificates of registration shall be five dollars (\$5.00).

Any registration which has expired may be renewed by paying ~~a fee of twenty dollars (\$20.00)~~ the registration fee plus one dollar (\$1.00) one-twelfth of the annual renewal fee per calendar month from the date of expiration. Charges above the renewal fee shall not exceed ~~twenty dollars (\$20.00)~~, an amount equal to the renewal fee.

(b) The Board shall require registered foresters to attend continuing education courses approved by the Board, not to exceed 12 hours per year, as a condition of renewal.

"§ 89B-12. *Examinations.*

When written examinations are required, they shall be held at ~~such the~~ time and places in the State of North Carolina as the Board shall determine. The methods of procedure will be described by the Board. A candidate failing an examination may apply for reexamination ~~at the expiration of~~ after six months and will be reexamined with payment of an additional fee ~~of fifteen dollars (\$15.00)~~, established by the Board, not to exceed fifty dollars (\$50.00). Subsequent examinations will be granted upon payment of ~~a fee of fifteen dollars (\$15.00)~~ this fee for each examination. The Board may limit an applicant to three examinations.

"§ 89B-13. *Revocations and reissuance of registration.*

The Board ~~shall have the power to may~~ revoke or suspend the certificate of registration of any registrant who ~~is found, by the Board, to be guilty of it~~ finds has committed gross negligence, fraud, deceit or flagrant misconduct in the practice of ~~forestry, forestry or who is found by the Board to have~~ has demonstrated incompetence as a practicing forester. The Board ~~is empowered to may~~ designate a person or persons to investigate and report to it upon any charges of fraud, deceit, gross negligence, incompetency or other misconduct ~~by a registrant in the practice of forestry, in connection with any forestry practice against any registrant that may come to its attention.~~

Any person may prefer charges against ~~any a~~ a registrant. ~~Such The~~ charges shall be in writing ~~and writing, shall be~~ sworn to by the person making ~~them and shall be~~ them, and filed with the secretary of the Board. The time and place for a hearing before the Board shall be fixed by the Board. At any hearing the accused may appear in person or by counsel. The Board may reissue a certificate of registration to any person whose certificate of registration has been revoked or suspended.

"§ 89B-14. *Roster of registered ~~foresters.~~ foresters; consulting forester affidavit.*

(a) A roster showing the names, registration numbers, and places of business residence of all ~~registered foresters qualified according to the provisions of~~ registrants under this Chapter shall be prepared annually by the secretary of the ~~Board Board~~, ~~during the month of July of each year.~~ Copies of this roster shall be placed on file with the Secretary of State of North Carolina and each clerk of superior court in North Carolina. A copy shall be sent to each registrant, and copies may be furnished to the public upon request and upon payment of a fee ~~to be~~ set by the Board.

(b) Each consulting forester shall annually file with the Board an affidavit of its compliance with this Chapter.

~~"§ 89B-15. Violation and penalties. Violation.~~

~~Any person who, without being registered in accordance with the provisions of this Chapter, shall use in connection with his name or otherwise assume, use or advertise any title or description tending to convey the impression that he is a registered forester; or any person who shall give any false or forged information of any kind to the Board or to any member thereof in obtaining a certificate of registration; or any person, firm, partnership or corporation who shall violate any of the provisions of this Chapter shall be guilty of~~ A violation of this Chapter is a Class 3 misdemeanor."

Section 2. This act becomes effective January 1, 1999.

In the General Assembly read three times and ratified this the 15th day of September, 1998.

Became law upon approval of the Governor at 3:38 p.m. on the 24th day of September, 1998.

S.B. 1242

SESSION LAW 1998-158

AN ACT TO PROVIDE FOR A WIRELESS ENHANCED 911 SYSTEM FOR THE USE OF CELLULAR, PERSONAL COMMUNICATIONS SERVICE, AND OTHER WIRELESS TELEPHONE CUSTOMERS, AS RECOMMENDED BY THE JOINT LEGISLATIVE UTILITY REVIEW COMMITTEE, AND TO ALLOW STATE AGENCIES TO LEASE PUBLIC PROPERTY FOR THE CONSTRUCTION OF WIRELESS COMMUNICATIONS TOWERS AND TO ENCOURAGE CO-LOCATION OF SERVICES TO THOSE TOWERS, AND TO MAKE A TECHNICAL CORRECTION TO G.S. 62A-10.

The General Assembly of North Carolina enacts:

Section 1. The General Statutes are amended by adding a new Chapter to read:

"Chapter 62B.

"Wireless Telephone Service.

"§ 62B-1. Definitions.

As used in this Chapter:

- (1) 'Automatic location identification' or 'ALI' means a wireless Enhanced 911 service capability that enables the automatic display of information defining the approximate geographic location of the wireless telephone used to place a 911 call in accordance with the FCC Order and includes pseudoautomatic number identification.
- (2) 'Automatic number identification' or 'ANI' means a wireless Enhanced 911 service capability that enables the automatic display of a mobile handset telephone number used to place a 911 call.
- (3) 'CMRS' means 'commercial mobile radio service' under sections 3(27) and 332(d) of the Federal Telecommunications Act of 1996, 47 U.S.C. § 151, et seq., and the Omnibus Budget

Reconciliation Act of 1993, Pub. L. 103-66, August 10, 1993, 107 Stat. 312. It includes the term 'wireless' and service provided by any wireless two-way voice communication device, including radio-telephone communications used in cellular telephone service, personal communications service, or the functional competitive equivalent of a radio-telephone communications line used in cellular telephone service, a personal communications service, SMR mobile service, or a network radio access line which has access to E911 service.

- (4) 'CMRS connection' means each mobile handset telephone number assigned to a CMRS customer with a billing address in North Carolina.
- (5) 'CMRS provider' means a person or entity who is licensed by the FCC to provide CMRS service or is reselling CMRS service.
- (6) 'Eligible PSAPs' means those public safety answering points that have opted to provide wireless Enhanced 911 service and have submitted written notice to their CMRS providers and to the Wireless 911 Board.
- (7) 'FCC Order' means the Order of the Federal Communications Commission, FCC Docket No. 94-102, adopted on December 1, 1997.
- (8) 'Local exchange carrier' means any entity that is authorized to engage in the provision of telephone exchange service or exchange access in North Carolina.
- (9) 'Mobile set telephone number' means the number assigned to a CMRS connection.
- (10) 'Proprietary information' means customer lists and other related information, technology descriptions, technical information, or trade secrets, including the term 'trade secrets' as defined by the North Carolina Trade Secrets Protection Act, G.S. 66-152, and the actual or developmental costs of wireless Enhanced 911 systems that are developed, produced, or received internally by a CMRS provider or by a CMRS provider's employees, directors, officers, or agents.
- (11) 'PSAP' ('public safety answering point') means the public safety agency that receives incoming 911 calls and dispatches appropriate public safety agencies to respond to such calls.
- (12) 'Pseudoautomatic number identification' or 'Pseudo-ANI' means a wireless Enhanced 911 service capability that enables the automatic display of the number of the cell site or cell face.
- (13) 'Service supplier' means a person or entity who provides exchange telephone service to a telephone subscriber.
- (14) 'Wireless 911 system' means an emergency telephone system that provides the user of a CMRS connection the ability to reach a PSAP by dialing the digits 911.
- (15) 'Wireless Enhanced 911 system' means an emergency telephone system that provides the user of the CMRS connection with wireless 911 service and, in addition, directs 911 calls to appropriate PSAPs by selective routing based on the geographical

location from which the call originated and provides the capability for ANI (or Pseudo-ANI) and ALI features, in accordance with the requirements of the FCC Order.

- (16) 'Wireless Fund' means the Wireless Emergency Telephone System Fund required to be established and maintained pursuant to G.S. 62B-2(c).

"§ 62B-2. Wireless 911 Board.

(a) There is created a Wireless 911 Board ('Board'), consisting of 13 members as follows:

- (1) Two members appointed by the Governor, one upon the recommendation of the North Carolina League of Municipalities and one upon the recommendation of the North Carolina Association of County Commissioners;
- (2) Five members appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives, one of whom shall be a sheriff, three representing CMRS providers licensed to do business in North Carolina and one representing the North Carolina Chapter of the Association of Public Safety Communications Officials (APCO);
- (3) Five members appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate, one of whom shall be a chief of police, two representing CMRS providers licensed to do business in North Carolina, one representing local exchange carriers licensed to do business in North Carolina, and one representing the North Carolina Chapter of the National Emergency Number Association (NENA); and
- (4) The Secretary of Commerce or the Secretary's designee, who shall serve as the chair.

A quorum of the Board shall consist of seven members. The Board shall meet upon the call of the chair.

(b) Each member shall serve a term of four years and may be appointed to no more than two successive terms. Vacancies may be filled in the same manner as the original appointment.

(c) There is established with the Treasurer the Wireless Fund into which the Board shall deposit all revenues derived from the service charge levied on CMRS connections in the State and collected pursuant to G.S. 62B-3. The Wireless Fund shall be a separate fund restricted to the uses set forth in this Chapter.

(d) Consistent with the provisions of G.S. 143-3.2, the Board shall disburse the revenues remitted to the Wireless Fund in the manner set forth in G.S. 62B-5. The Board shall establish procedures for disbursement of these revenues and advise the CMRS providers and eligible counties of such procedures within 60 days after all members are appointed pursuant to G.S. 62B-2(a).

(e) The Board shall serve without compensation, but members of the Board shall receive per diem, subsistence, and travel allowances at the rate established in G.S. 138-5.

"§ 62B-3. Amount of service charge.

(a) The Board shall levy a monthly wireless Enhanced 911 service charge on each CMRS connection. The rate of such service charge shall initially be set at eighty cents (80¢) per month per each CMRS connection beginning October 1, 1998. The service charge shall have uniform application and shall be imposed throughout the State.

(b) The service charge may be adjusted by the Board beginning July 1, 2000 and every two years thereafter. The Board is to set the service charge at such a rate as to ensure full recovery for CMRS providers and for PSAPs, over a reasonable period of time, of the costs associated with developing and maintaining a wireless Enhanced 911 system. If necessary to ensure full recovery of costs for both CMRS providers and PSAPs over a reasonable period of time, the Board may, at the time it adjusts the service charge, also adjust the allocation percentages set forth in G.S. 62B-5(a) and G.S. 62B-5(b).

(c) The service charge shall not exceed eighty cents (80¢) per month.

(d) The Board may adopt other rules and procedures as may be necessary to effect the provisions of this act but may not regulate any other aspect of the provision of wireless Enhanced 911 service, such as technical standards.

(e) No other State agency or local government may levy any additional surcharge relating to the provision of wireless Enhanced 911 service.

"§ 62B-4. Management of funds.

(a) Each CMRS provider, as a part of its monthly billing process, shall collect the wireless Enhanced 911 service charge described in G.S. 62B-3. The CMRS provider may list the service charge as a separate entry on each bill. If a CMRS provider receives a partial payment for a monthly bill from a subscriber, the provider shall apply the payment first against the amount the subscriber owes the provider.

(b) A CMRS provider has no obligation to take any legal action to enforce the collection of the service charges for which any subscriber is billed. However, a collection action may be initiated by the Board and reasonable costs and attorneys' fees associated with that collection action may be awarded.

(c) Each CMRS provider shall be entitled to deduct a one percent (1%) administrative fee from the total service charges collected.

(d) All service charges collected by the CMRS providers, less the administrative fee described in subsection (c) of this section, are to be remitted to the Wireless Fund, not later than 30 days after the end of the calendar month in which such service charges are collected.

"§ 62B-5. Use of funds.

(a) Sixty percent (60%) of the funds in the Wireless Fund established in G.S. 62B-2(c) shall be used to reimburse CMRS providers, in response to sworn invoices submitted to the Board, for the actual costs incurred by the CMRS providers in complying with the wireless 911 requirements established by the FCC Order and any rules and regulations which are or may be adopted by the FCC pursuant to the FCC Order, including costs and expenses incurred for designing, upgrading, purchasing, leasing, programming, installing, testing, or maintaining all necessary data, hardware, and software required in order to provide such service as well as

the recurring and nonrecurring costs of operating such service. All costs and expenses must be commercially reasonable.

(b) Forty percent (40%) of the funds in the Wireless Fund established in G.S. 62B-2(c) shall be used to make monthly distributions to eligible PSAPs (the '40% Fund'). Money from the 40% Fund shall be used only to pay for the lease, purchase, or maintenance of emergency telephone equipment for the wireless Enhanced 911 system, including necessary computer hardware, software and database provisioning, and nonrecurring costs of establishing a wireless Enhanced 911 system. Money from the 40% Fund shall also be used to pay the rates associated with the local telephone companies' charges related to the operation of the wireless Enhanced 911 system. The 40% Fund shall be distributed as follows:

- (1) Fifty percent (50%) of it shall be divided equally among the total number of PSAPs in North Carolina. However, monthly distribution shall be made only to those PSAPs that have complied with the provisions of this Chapter. Distribution to each eligible PSAP will begin the month following its compliance with the provisions of this Chapter. All monies remaining in this portion of the 40% Fund on January 31 of each year will then be evenly distributed to each of the eligible PSAPs.
- (2) The other fifty percent (50%) shall be divided pro rata among the eligible PSAPs based on the population served by the PSAP. However, monthly distribution shall be made only to those PSAPs that have complied with the provisions of this Chapter. Distribution to each eligible PSAP will begin the month following its compliance with the provisions of this Chapter. The population data to be used shall be the latest certified county and official municipal estimates of population published by the Office of State Planning. All monies remaining in this portion of the 40% Fund on January 31 of each year will then be distributed to each of the eligible PSAPs based on the population served by the PSAP.

(c) Sworn invoices shall be presented by CMRS providers in connection with any request for reimbursement under this section. In no event shall any invoice for reimbursement be approved for the payment of costs that are not related to compliance with the wireless Enhanced 911 service requirements established by the FCC Order and any rules and regulations which are or may be adopted by the FCC pursuant to the FCC Order.

(d) In no event shall any invoice for reimbursement be approved for payment of costs of any CMRS provider exceeding one hundred twenty-five percent (125%) of the service charges remitted by such CMRS provider unless prior approval for such expenditures is received from the Board. If the total amount of invoices submitted to the Board and approved for payment exceeds the amount in the Wireless Fund in any month, CMRS providers that have invoices approved for payment shall receive a pro rata share of the Wireless Fund, based on the relative amount of their approved invoices available that month, and the balance of the payments will be carried over to the following month or months and shall include interest at the rate set out in G.S. 24-1 until all of the approved payments are made.

(e) In January of each year every participating PSAP will submit to the Board a copy of its governing agency's approved budget detailing the PSAP's revenues and expenditures associated with the operation of its wireless Enhanced 911 system. PSAPs must comply with all requests by the Board for financial information related to the operation of the wireless Enhanced 911 system.

(f) On February 15, 2000, and every two years thereafter the Board shall report to the Joint Legislative Commission on Governmental Operations and the Revenue Laws Study Committee. The report shall contain complete information regarding receipts and expenditures of all funds received by the Board during the period covered by the report as well as the status of wireless Enhanced 911 systems in North Carolina at the time of the report. The first report shall cover the period from the formation of the Board to December 31, 1999. Each succeeding report shall cover the two-year period of time from the ending date of the previous report.

"§ 62B-6. Administrative fee.

The Board shall be entitled to deduct a one percent (1%) administrative fee from the total service charges remitted by the CMRS providers for its expenses.

"§ 62B-7. Provision of services.

In accordance with the FCC Order, no CMRS provider shall be required to provide wireless Enhanced 911 service until such time as (i) the provider receives a request for such service from the administrator of a PSAP that is capable of receiving and utilizing the data elements associated with the service; (ii) funds are available pursuant to G.S. 62B-4; and (iii) the local exchange carrier is able to support the wireless Enhanced 911 system.

"§ 62B-8. Audit.

The State Auditor may perform audits pursuant to Article 5A of Chapter 147 of the General Statutes to ensure that funds in the Wireless Fund are being managed in accordance with the provisions of this Chapter and shall perform an audit at least every two years. The State Auditor shall provide the audit to the Board when it meets to consider adjusting the service charge pursuant to G.S. 62B-3. The cost of audits shall be reimbursed to the State Auditor by the Board.

"§ 62B-9. Customer records.

Each CMRS provider shall provide its 10,000 number groups to the PSAPs upon request. This information shall remain the property of the disclosing CMRS provider and shall be used only in providing emergency response services to 911 calls. CMRS connection information obtained by PSAP personnel for public safety purposes is not public information under Chapter 132 of the General Statutes. No person shall disclose or use, for any purpose other than for the wireless 911 calling system, information contained in the database of the telephone network portion of a wireless 911 calling system established pursuant to this Chapter.

"§ 62B-10. Proprietary information.

All proprietary information submitted to the Board or the State Auditor shall be retained in confidence. Proprietary information submitted pursuant to this Chapter shall not be subject to disclosure under Chapter 132 of the General Statutes, or otherwise released to any person other than to the

submitting CMRS provider, the Board, and the independent, third-party auditor retained pursuant to G.S. 62B-6, without the express permission of the submitting CMRS provider. Further, proprietary information shall constitute trade secrets as defined by the North Carolina Trade Secrets Protection Act, Article 24 of Chapter 66 of the General Statutes. General information collected by the Board or the State Auditor shall be released or published only in aggregate amounts that do not identify or allow identification of numbers of subscribers or revenues attributable to an individual CMRS provider.

"§ 62B-11. Limitation of liability.

A CMRS provider, local exchange company, service supplier, or their employees, directors, officers, or agents, except in cases of wanton or willful misconduct, shall not be liable for any damages in a civil action resulting from death or injury to any person or from damage to property incurred by any person in connection with developing, adopting, implementing, maintaining, or operating any wireless 911 system or wireless Enhanced 911 system. This section shall not apply to actions arising out of the operation or ownership of a motor vehicle.

"§ 62B-12. Misuse of wireless 911 system; penalty.

Wireless emergency telephone service shall be used solely for emergency communications by the public. Any person who knowingly uses or attempts to use wireless emergency telephone service or information for a purpose other than obtaining public safety assistance, or who knowingly uses or attempts to use wireless emergency telephone service in an effort to avoid any CMRS charges, is guilty of a Class 3 misdemeanor. If the value of the CMRS charge or service obtained in a manner prohibited by this section exceeds one hundred dollars (\$100.00), the person is guilty of a Class 1 misdemeanor."

Section 2. G.S. 62A-10 reads as rewritten:

"§ 62A-10. Limitation of liability.

A service supplier, including any telephone company and its employees, directors, officers and agents, is not liable for any damages in a civil action for injuries, death, or loss to persons or property incurred by any person as a result of any act or omission of a service supplier or of any of its employees, directors, officers, or agents, except for willful or wanton misconduct, in connection with developing, adopting, implementing, maintaining, or operating any 911 system. This section shall not apply to actions arising out of the operation or ownership of a motor vehicle."

Section 3. Chapter 146 of the General Statutes is amended by adding a new section to read:

"§ 146-29.2. Lease provisions for communications towers.

The State may lease real property, or any interest in real property, for the purposes of construction and placement of communications towers on State land or for placement of antennas upon State-owned structures. The following additional requirements shall apply to such leases:

- (1) The lease shall require the lessee to permit other telecommunications carriers to co-locate on the communications tower on commercially reasonable terms between the lessee and the co-locating carrier until the communications tower reaches its

capacity. Unless the State determines that co-location is not feasible at that location, the communications tower shall be designed and constructed to accommodate other carriers on the tower.

- (2) The State shall, in determining the location of lands to be leased for communications towers, encourage communications towers to be located near other communications towers to the extent technically desirable.
- (3) The State shall, when choosing a communications tower or antenna location, choose a location which minimizes the visual impact on surrounding landscape.
- (4) The State shall not lease lands of the State Parks System for such purposes.

For purposes of this section, 'co-locate and co-location' mean the sharing of a communications tower by two or more services.

City and county ordinances apply to communications towers and antennas authorized under this section."

Section 4. G.S. 105-120 is amended by adding a new subsection to read:

"(c1) Enhanced 911 Service Charge. -- Gross receipts of an entity that provides local telecommunications service do not include wireless Enhanced 911 service charges imposed under G.S. 62B-3 and remitted to the Wireless Fund under G.S. 62B-4."

Section 5. G.S. 105-130.5(b) is amended by adding a new subdivision to read:

"(17) The amount of wireless Enhanced 911 service charges collected under G.S. 62B-3 and remitted to the Wireless Fund under G.S. 62B-4."

Section 6. If any provision of this act or the application of this act to any person or circumstance is held invalid, that invalidity shall not affect other provisions or applications of this act that can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

Section 7. Section 5 of this act is effective for taxable years beginning on or after October 1, 1998. The remainder of this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 14th day of September, 1998.

Became law upon approval of the Governor at 5:00 p.m. on the 25th day of September, 1998.

H.B. 1737

SESSION LAW 1998-159

AN ACT TO PROVIDE THAT THE CENTENNIAL CAMPUS AT NORTH CAROLINA STATE UNIVERSITY INCLUDES THE COLLEGE OF VETERINARY MEDICINE, TO CLARIFY THAT THE BOARD OF GOVERNORS HAS THE AUTHORITY TO DESIGNATE THE REAL ESTATE AND APPURTENANT FACILITIES THAT COMPRISE THE CENTENNIAL CAMPUS AT NORTH CAROLINA

STATE UNIVERSITY, TO MODIFY THE AUTHORITY OF THE BOARD OF GOVERNORS WITH REGARD TO CERTAIN TYPES OF DISPOSITIONS OF CENTENNIAL CAMPUS PROPERTY, TO EXEMPT CERTAIN REAL ESTATE TRANSACTIONS ON THE CENTENNIAL CAMPUS FROM PAYMENT OF THE STATE LAND SERVICE CHARGE, AND TO LIMIT THE NUMBER OF YEARS STATE PROPERTY CAN BE LEASED TO NINETY-NINE YEARS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 116-36.5 reads as rewritten:

"§ 116-36.5. *Centennial Campus trust fund.*

All moneys received through development of the Centennial Campus of North Carolina State University at Raleigh, from whatever source, including the net proceeds from the lease or rental of Centennial Campus real property, shall be placed in a special, continuing, and nonreverting trust fund having the sole and exclusive use for further development of the Centennial Campus, including its operational development. This fund shall be treated in the manner of institutional trust funds as provided in G.S. 116-36.1. This fund shall be deemed an additional and alternative method of funding the Centennial Campus and not an exclusive one. For purposes of this section the term 'Centennial Campus' ~~shall mean that real property and appurtenant facilities designated by the Board as part of the Centennial Campus of North Carolina State University at Raleigh.~~ is defined by G.S. 116-198.33(4). To the extent that any general, special, or local law is inconsistent with this section, it is declared inapplicable to this section."

Section 2. G.S. 116-198.33(4) reads as rewritten:

"(4) The term 'Centennial Campus' ~~shall mean~~ means all of the following properties:

- a. The real property and appurtenant facilities bounded by Blue Ridge Road, Hillsborough Street, Wade Avenue, and Interstate 440 that are the sites of the College of Veterinary Medicine, the University Club, and the Agricultural Turf Grass Management Program.
- b. The real property and appurtenant facilities that are the former Dix Hospital properties and other contiguous parcels of property that are adjacent to Centennial Boulevard.
- c. All other ~~that~~ real property and appurtenant facilities designated by the Board of Governors as part of the Centennial Campus of the Institution. Campus. The properties designated by the Board of Governors do not have to be contiguous with the Centennial Campus to be designated as part of that Campus."

Section 3. G.S. 116-198.34 reads as rewritten:

"§ 116-198.34. *General powers of Board of Governors.*

~~The Board is authorized, subject to the requirements of this Article, may exercise any one or more of the following powers:~~

- (1) To determine the location and character of any project or projects, and to acquire, construct, and provide the same, and to maintain, repair, and operate, and to enter into contracts for the

- management, lease, use, or operation of all or any portion of any project or projects and any existing ~~facilities;~~ facilities.
- (2) To issue revenue bonds as hereinafter provided to pay all or any part of the cost of any project or projects, and to fund or refund the ~~same;~~ same.
 - (3) To fix and revise from time to time and charge and collect rates, fees, rents, and charges for the use of, and for the services furnished by, all or any portion of any project or ~~projects;~~ projects.
 - (4) To establish and enforce, and to agree through any resolution or trust agreement authorizing or securing bonds under this Article to make and enforce, rules and regulations for the use of and services rendered by any project or projects and any existing facilities, to provide for the maximum use of any project or projects and any existing ~~facilities;~~ facilities.
 - (5) To acquire, hold, lease, and dispose of real and personal property in the exercise of its powers and the performance of its duties hereunder and to lease all or any part of any project or projects and any existing facilities ~~for such period or periods of years, not exceeding 40 years,~~ upon such terms and conditions as the Board determines, subject to the provisions of ~~G.S. 143-341;~~ G.S. 143-341 and Chapter 146 of the General Statutes.
Notwithstanding G.S. 143-341 and Chapter 146 of the General Statutes, a disposition by easement, lease, or rental agreement of space in any building on the Centennial Campus made for a period of 10 years or less shall not require the approval of the Governor and the Council of State. All other acquisitions and dispositions made under this subdivision are subject to the provisions of G.S. 143-341 and Chapter 146 of the General Statutes.
 - (6) To employ consulting engineers, architects, attorneys, accountants, construction and financial experts, superintendents, managers, and such other employees and agents as may be necessary in its judgment in connection with any project or projects and existing facilities, and to fix their ~~compensation;~~ compensation.
 - (7) To make and enter into all contracts and agreements necessary or incidental to the performance of its duties and the execution of its powers under this ~~Article;~~ Article.
 - (8) To receive and accept from any federal, State, or other public agency and any private agency, person or other entity donations, loans, grants, aid, or contributions of any money, property, labor, or other things of value for any project or projects, and to agree to apply and use the same in accordance with the terms and conditions under which the same are ~~provided; and~~ provided.
 - (8a) To designate the real property and appurtenant facilities to be included as part of the Centennial Campus.
 - (9) To do all acts and things necessary or convenient to carry out the powers granted by this Article."

Section 4. G.S. 146-30 is amended by adding a new subsection to read:

"(b1) Notwithstanding the other provisions of this section, no service charge into the State Land Fund shall be deducted from or levied against the proceeds of any disposition by lease, rental, or easement of State lands that are designated as part of the Centennial Campus as defined by G.S. 116-198.33(4). All net proceeds of those dispositions are governed by G.S. 116-36.5."

Section 5. G.S. 146-27 reads as rewritten:

"§ 146-27. The role of the Department of Administration in sales, leases, and rentals.

(a) General. -- Every sale, lease, rental, or gift of land owned by the State or by any State agency shall be made by the Department of Administration and approved by the Governor and Council of State; provided that if the proposed disposition is a sale or gift of land with an appraised value of at least twenty-five thousand dollars (\$25,000), the sale or gift shall not be made until after consultation with the Joint Legislative Commission on Governmental Operations, State. A lease or rental of land owned by the State may not exceed a period of 99 years. The Department of Administration may initiate proceedings for sales, leases, rentals, and gifts of land owned by the State or by any State agency.

(b) Large Disposition. -- If a proposed disposition is a sale or gift of land with an appraised value of at least twenty-five thousand dollars (\$25,000), the sale or gift shall not be made until after consultation with the Joint Legislative Commission on Governmental Operations."

Section 6. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 17th day of September, 1998.

Became law upon approval of the Governor at 5:25 p.m. on the 28th day of September, 1998.

H.B. 1518

SESSION LAW 1998-160

AN ACT TO AUTHORIZE THE DIVISION OF MOTOR VEHICLES TO ISSUE EAGLE SCOUT SPECIAL REGISTRATION PLATES TO EAGLE SCOUTS OR THEIR PARENTS OR GUARDIANS, TO ISSUE GIRL SCOUT GOLD AWARD SPECIAL REGISTRATION PLATES TO RECIPIENTS OF THE GIRL SCOUT GOLD AWARD OR THEIR PARENTS OR GUARDIANS, AND TO ISSUE SMALLER REGISTRATION PLATES FOR MOTORCYCLES AND MOTORCYCLE TRAILERS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-79.4(b) is amended by adding a new subdivision to read:

"(13a) Eagle Scout. -- Issuable to a young man who has been certified as an Eagle Scout by the Boy Scouts of America, or to his parents or guardians. The plate shall bear the insignia of the Boy Scouts of America and shall bear the words "Eagle

Scout". The Division may not issue the plate authorized by this subdivision unless it receives at least 300 applications for the plate."

Section 2. G.S. 20-79.4(b) is amended by adding a new subdivision to read:

"(16a) Girl Scout Gold Award recipient. -- Issuable to a young woman who has been certified as a Girl Scout Gold Award recipient by the Girl Scouts of the U.S.A., or to her parents or guardians. The plate shall bear the insignia of the Girl Scouts of the U.S.A. and shall bear the words "Girl Scout Gold Award". The Division may not issue the plate authorized by this subdivision unless it receives at least 300 applications for the plate."

Section 3. G.S. 20-63(d) reads as rewritten:

"(d) Registration plates issued for a motor vehicle other than a motorcycle, trailer, or semitrailer shall be attached thereto, one in the front and the other in the rear: Provided, that when only one registration plate is issued for a motor vehicle other than a truck-tractor, said registration plate shall be attached to the rear of the motor vehicle. The registration plate issued for a truck-tractor shall be attached to the front thereof. Provided further, that when only one registration plate is issued for a motor vehicle and this motor vehicle is transporting a substance that may adhere to the plate so as to cover or discolor the plate or if the motor vehicle has a mechanical loading device that may damage the plate, the registration plate may be attached to the front of the motor vehicle.

Any motor vehicle of the age of 35 years or more from the date of manufacture may bear the license plates of the year of manufacture instead of the current registration plates, if the current registration plates are maintained within the vehicle and produced upon the request of any person.

The Division shall provide registered owners of motorcycles and motorcycle trailers with suitably reduced size registration plates."

Section 4. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 17th day of September, 1998.

Became law upon approval of the Governor at 5:27 p.m. on the 28th day of September, 1998.

H.B. 1483

SESSION LAW 1998-161

AN ACT TO EXPEDITE THE CLOSURE OF LOW RISK LEAKING PETROLEUM UNDERGROUND STORAGE TANK CLEANUPS BY ALLOWING THE COST OF OBTAINING THE ADDITIONAL INFORMATION REQUIRED TO ASSESS THE RISK OF RELEASES REPORTED PRIOR TO THE EFFECTIVE DATE OF THE RISK ASSESSMENT RULES TO BE PAID FROM THE COMMERCIAL FUND OR THE NONCOMMERCIAL FUND UNDER CERTAIN CIRCUMSTANCES, TO PROVIDE THAT THE COST OF CONNECTING THIRD PARTIES TO PUBLIC WATER SYSTEMS MAY BE PAID FROM THE COMMERCIAL FUND OR THE

NONCOMMERCIAL FUND UNDER CERTAIN CIRCUMSTANCES, TO MAKE LANDOWNERS ELIGIBLE FOR REIMBURSEMENT OF CLEANUP COSTS FROM THE NONCOMMERCIAL FUND UNDER CERTAIN CIRCUMSTANCES, TO AUTHORIZE THE ENVIRONMENTAL MANAGEMENT COMMISSION TO REQUIRE THAT ASSESSMENT AND CLEANUP TASKS AND COSTS BE PREAPPROVED BEFORE WORK PROCEEDS, TO MAKE PETROLEUM COMMERCIAL UNDERGROUND STORAGE TANK OPERATING PERMITS SUBJECT TO ADDITIONAL FEDERAL REQUIREMENTS APPLICABLE IN 1998, TO PROVIDE FOR ASSIGNMENT OF PAYMENTS FROM THE COMMERCIAL FUND AND THE NONCOMMERCIAL FUND, TO ESTABLISH A DE MINIMIS REPORTING REQUIREMENT FOR PETROLEUM UNDERGROUND STORAGE TANK SPILLS AND OVERFILLS OF LESS THAN TWENTY-FIVE GALLONS THAT ARE CLEANED UP WITHIN TWENTY-FOUR HOURS, TO PROVIDE THAT FEDERAL LIMITATIONS ON LENDER LIABILITY APPLY TO THE LEAKING PETROLEUM UNDERGROUND STORAGE TANK CLEANUP PROGRAM, TO PROVIDE THAT RULES APPLICABLE TO COMMERCIAL UNDERGROUND STORAGE TANKS DO NOT APPLY TO CERTAIN TANKS, AND TO MAKE RELATED CONFORMING AND TECHNICAL AMENDMENTS.

The General Assembly of North Carolina enacts:

Section 1. Cost of obtaining additional information required to assess risk of releases reported prior to effective date of risk assessment rules payable from the Commercial Fund or the Noncommercial Fund under certain circumstances. -- (a) The definitions set out in G.S. 143-212 and G.S. 143-215.94A apply to this section.

(b) Subject to the requirements and limitations of this section, an owner, operator, or landowner may elect to have the Commercial Fund or the Noncommercial Fund, as appropriate, pay or reimburse the cost of obtaining the additional information needed by the Commission and the Department to assess the risk to human health and the environment posed by a discharge or release from a petroleum underground storage tank under rules adopted by the Commission pursuant to G.S. 143-215.94V without paying the costs for which the owner, operator, or landowner would otherwise be responsible under subsections (b) or (b1) of G.S. 143-215.94B or G.S. 143-215.94E(c1).

(c) The Department shall pay on behalf of, or reimburse a cost paid by, an owner, operator, or landowner only if:

- (1) The owner, operator, or landowner meets all the requirements of Part 2A of Article 21A of the General Statutes that establish eligibility for payment or reimbursement of costs other than the requirement that the owner, operator, or landowner pay the costs for which the owner, operator, or landowner is otherwise responsible under subsections (b) or (b1) of G.S. 143-215.94B or G.S. 143-215.94E(c1).

- (2) The discharge or release was reported as required by G.S. 143-215.85 prior to 2 January 1998.
- (3) The owner, operator, or landowner has complied with 15A NCAC 2N.0704.
- (4) The Department determines that additional work is necessary under 15A NCAC 2L.0115(c)(4) to classify the risk to human health and the environment posed by the discharge or release.
- (5) The Department approves the additional work and the cost of the additional work before the owner, operator, or landowner proceeds with the additional work.
- (d) The Department shall pay or reimburse claims under this section in the order in which the claims are received. The total of all costs paid or reimbursed under this section in any calendar month shall not exceed twenty percent (20%) of the total of all monies paid to the Commercial Fund from all sources during the previous calendar month.
- (e) Costs paid or reimbursed from the Commercial Fund or the Noncommercial Fund under this section shall not be credited toward costs for which the owner, operator, or landowner is responsible under subsections (b) or (b1) of G.S. 143-215.94B or G.S. 143-215.94E(c1).

Section 2. Department may pay the cost of connecting third parties to public water system from the Commercial Fund under certain circumstances. -- G.S. 143-215.94B is amended by adding a new subsection to read:

"(b3) For purposes of subsections (b) and (b1) of this section, the cleanup of environmental damage includes connection of a third party to a public water system if the Department determines that connection of the third party to a public water system is a cost-effective measure, when compared to other available measures, to reduce risk to human health or the environment. A payment or reimbursement under this subsection is subject to the requirements and limitations of this section. This subsection shall not be construed to limit any right or remedy available to a third party under any other provision of law. This subsection shall not be construed to require a third party to connect to a public water system. Except as provided by this subsection, connection to a public water system does not constitute cleanup under Part 2 of this Article, G.S. 143-215.94E, G.S. 143-215.94V, any other applicable statute, or at common law."

Section 3. Department may pay the cost of connecting third parties to public water system from the Noncommercial Fund under certain circumstances. -- G.S. 143-215.94D is amended by adding a new subsection to read:

"(b3) For purposes of subsection (b1) of this section, the cleanup of environmental damage includes connection of a third party to a public water system if the Department determines that connection of the third party to a public water system is a cost-effective measure, when compared to other available measures, to reduce risk to human health or the environment. A payment or reimbursement under this subsection is subject to the requirements and limitations of this section. This subsection shall not be

construed to limit any right or remedy available to a third party under any other provision of law. This subsection shall not be construed to require a third party to connect to a public water system. Except as provided by this subsection, connection to a public water system does not constitute cleanup under Part 2 of this Article, G.S. 143-215.94E, G.S. 143-215.94V, any other applicable statute, or at common law."

Section 4. Landowners eligible for reimbursement of cleanup cost from Noncommercial Fund under certain circumstances. -- Section 9 of Chapter 648 of the 1995 Session Laws (1996 Regular Session) reads as rewritten:

"Sec. 9. Sections 1 and 7 of this act become effective 30 days after the date this act is ratified and expires on the date that a temporary or permanent rule adopted under G.S. 143-215.94V(b) become effective as provided in G.S. 150B-21.3. Section 2 of this act becomes effective 1 January 1997. Section 3 of this act becomes effective upon ratification, applies retroactively to any discharge or release that is discovered and reported on or after 1 January 1992 and before 1 October 1997, and expires on 1 October 1997, 1992. Section 4 of this act is effective upon ratification. Sections 5, 6, 8, and 9 of this act become effective upon ratification."

Section 5. Environmental Management Commission may require that assessment and cleanup tasks and costs be preapproved before work proceeds. -- G.S. 143-215.94E is amended by adding a new subsection to read:

"(e2) The Commission may require an owner, operator, or landowner to obtain approval from the Department before proceeding with any task that will result in a cost that is eligible to be paid or reimbursed under G.S. 143-215.94B(b), 143-215.94B(b1), or 143-215.94D(b1). The Commission shall specify by rule those tasks for which preapproval is required. The Department shall deny any request for payment or reimbursement of the cost of any task for which preapproval is required if the owner, operator, or landowner failed to obtain preapproval of the task. The Department shall pay or reimburse the cost of a task for which preapproval is not required only if the cost is eligible to be paid under G.S. 143-215.94B(b), 143-215.94B(b1), or 143-215.94D(b1) and if the Department determines that the cost is reasonable and necessary. The Commission shall adopt rules governing reimbursement of necessary and reasonable costs. In all cases, the Department shall require an owner, operator, or landowner to submit documentation sufficient to establish that a cost is eligible to be paid or reimbursed under this Part before the Department pays or reimburses the cost."

Section 6. Petroleum commercial underground storage tank operating permits subject to additional federal requirements applicable in 1998. -- G.S. 143-215.94U(a) reads as rewritten:

"(a) The owner or operator of each petroleum commercial underground storage tank shall annually obtain an operating permit from the Department for the facility at which the tank is located. The Department shall issue an operating permit only if the owner or operator:

- (1) Has notified the Department of the existence of all tanks as required by 40 Code of Federal Regulations § 280.22 (1 July 1994 Edition) or 42 U.S.C. § 6991a, if applicable, at the facility;
- (2) Has paid all fees required under G.S. 143-215.94C for all commercial petroleum underground storage tanks located at the facility;
- (3) Complies with applicable release ~~detection~~ detection, spill and overfill protection, and corrosion protection requirements set out in rules adopted pursuant to this Chapter, notifies the Department of the method or combination of methods of leak ~~detection~~ detection, spill and overfill protection, and corrosion protection in use, and certifies to the Department that all applicable release ~~detection~~ detection, spill and overfill protection, and corrosion protection requirements are being met for all petroleum underground storage tanks located at the facility;
- (4) If applicable, complies with the Stage I vapor control requirements set out in 15A North Carolina Administrative Code 2D.0928, effective 1 March 1991, notifies the Department of the method or combination of methods of vapor control in use, and certifies to the Department that all Stage I vapor control requirements are being met for all petroleum underground storage tanks located at the facility; and
- (5) Has substantially complied with the air quality, groundwater quality, and underground storage tank standards applicable to any activity in which the applicant has previously engaged and has been in substantial compliance with federal and State laws, regulations, and rules for the protection of the environment. In determining substantial compliance, the compliance history of the owner or operator and any parent, subsidiary, or other affiliate of the owner, operator, or parent may be considered."

Section 7. Assignment of payments from the Commercial Fund and the Noncommercial Fund. -- G.S. 143-3.3 is amended by adding a new subsection to read:

"(l) Assignment of Payments From the Underground Storage Tank Cleanup Funds. -- This section does not apply to an assignment of any claim for payment or reimbursement from the Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund established by G.S. 143-215.94B or the Noncommercial Leaking Petroleum Underground Storage Tank Cleanup Fund established by G.S. 143-215.94D."

Section 8. De minimis reporting requirement for petroleum underground storage tanks spills and overfills of less than 25 gallons that are cleaned up within 24 hours. -- (a) G.S. 143-215.94E(a) reads as rewritten:

"(a) Upon a determination that a discharge or release of petroleum from an underground storage tank has occurred, the owner or operator of the underground storage tank shall notify the Department pursuant to G.S. 143-215.85. The owner or operator of the underground storage tank shall immediately undertake to collect and remove the discharge or release and to

restore the area affected in accordance with the requirements of this Article."

(b) G.S. 143-215.94E is amended by adding a new subsection to read:

"(a1) If a spill or overflow associated with a petroleum underground storage tank results in a release of petroleum to the environment of 25 gallons or more or causes a sheen on nearby surface water, the owner or operator of the petroleum underground storage tank shall immediately clean up the spill or overflow, report the spill or overflow to the Department within 24 hours of the spill or overflow, and begin to restore the area affected in accordance with the requirements of this Article. The owner or operator of a petroleum underground storage tank shall immediately clean up a spill or overflow of less than 25 gallons of petroleum that does not cause a sheen on nearby surface water. If a spill or overflow of less than 25 gallons of petroleum cannot be cleaned up within 24 hours of the spill or overflow or causes a sheen on nearby surface water, the owner or operator of the petroleum underground storage tank shall immediately notify the Department."

Section 9. Federal limitations on lender liability apply. -- G.S. 143-215.94L(b) reads as rewritten:

"(b) This Part shall be administered by the Department consistent with the provisions of Title VI, § 601 of the Hazardous and Solid Waste Amendments of 1984, Pub. L. No. 98-616, 42 U.S.C. § 6991 et seq., et seq., as amended. The provisions of 40 Code of Federal Regulations Part 280, Subpart I -- Lender Liability (1 July 1997 Edition) apply to this Part and Part 2B of this Article."

Section 10. Rules applicable to commercial underground storage tanks do not apply to certain tanks. -- G.S. 143-215.94T reads as rewritten:

"§ 143-215.94T. Adoption and implementation of regulatory program.

(a) The Commission shall adopt, and the Department shall implement and enforce, rules relating to underground storage tanks as provided by G.S. 143-215.3(a)(15) and G.S. 143B-282(2)h. ~~Such~~ These rules shall include standards and requirements applicable to both existing and new underground storage tanks and tank systems, may include different standards and requirements based on tank capacity, tank location, tank age, and other relevant factors, and shall include, at a minimum, standards and requirements for:

- (1) Design, construction, and installation, including monitoring ~~systems;~~ systems.
- (2) Notification to the Department, inspection, and ~~registration;~~ registration.
- (3) ~~Recordation of tank location;~~ location.
- (4) Modification, retrofitting, and ~~upgrading;~~ upgrading.
- (5) General operating ~~requirements;~~ requirements.
- (6) Release ~~detection;~~ detection.
- (7) Release reporting, investigation, and ~~confirmation;~~ confirmation.
- (8) ~~Corrective action;~~ action.
- (9) ~~Repair;~~ Repair.
- (10) ~~Closure; and~~ Closure.

(11) Financial responsibility.

(b) Rules adopted pursuant to subsection (a) of this section that apply only to commercial underground storage tanks shall not apply to any:

- (1) Farm or residential underground storage tank of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes.
- (2) Underground storage tank of 1,100 gallons or less capacity used for storing heating oil for consumptive use on the premises where stored.
- (3) Underground storage tank of more than 1,100 gallon capacity used for storing heating oil for consumptive use on the premises where stored by four or fewer households."

Section 11. Conforming and technical changes. -- (a) G.S. 143-215.94D(b1) reads as rewritten:

"(b1) The Noncommercial Fund shall be used for the payment of the costs of:

- (1) The cleanup of environmental damage as required by G.S. ~~143-215.94E(a); and~~ 143-215.94E(a).
- (2) Compensation to third parties for bodily injury and property damage in excess of one hundred thousand dollars (\$100,000) per occurrence.
- (3) Reimbursing the State for damages or other costs incurred as a result of a loan from the Loan Fund. The per occurrence limit does not apply to reimbursements to the State under this subdivision."

(b) G.S. 143-215.94E(e) reads as rewritten:

"(e) ~~When the owner or operator an owner, operator, or landowner~~ pays the costs described in G.S. 143-215.94B(b), 143-215.94B(b1), or 143-215.94D(b1) resulting from a discharge or release of petroleum from an underground storage tank, ~~the owner or operator~~ owner, operator, or landowner may seek reimbursement from the appropriate fund for any costs ~~he that the owner, operator, or landowner~~ may elect to have either the Commercial Fund or the Noncommercial Fund pay in accordance with subsections ~~(b) and (c)~~ (b), (b1), (c), and (c1) of this section. ~~The Department shall reimburse the owner or operator for all costs he may elect to have the appropriate fund pay that the Department determines to be reasonable and necessary and for which appropriate documentation is submitted.~~ The Department may contract for any services necessary to evaluate any claim for reimbursement or compensation from either the Commercial Fund or the Noncommercial Fund, may contract for any expert witness or consultant services necessary to defend any decision to pay or deny any claim for reimbursement, and may pay the cost of these services from the fund against which the claim is made; provided that in any fiscal year the Department shall not expend from either fund more than one percent (1%) of the unobligated balance of the fund on 30 June of the previous fiscal year. The cost of contractual services to evaluate a claim or for expert witness or consultant services to defend a decision with respect to a claim shall be included as costs under G.S. ~~143-215.94B(b) and G.S. 143-215.94D(b1).~~ 143-215.94B(b), 143-215.94B(b1), and

~~143-215.94D(b1). The Commission shall adopt rules governing reimbursement of necessary and reasonable costs.~~ An owner or operator whose claim for reimbursement is denied may appeal a decision of the Department as provided in Article 3 of Chapter 150B of the General Statutes. If the owner or operator is eligible for reimbursement under this section and the cleanup extends beyond a period of three months, the owner or operator may apply to the Department for interim reimbursements to which he is entitled under this section on a quarterly basis. If the Department fails to notify an owner or operator of its decision on a claim for reimbursement under this subsection within 90 days after the date the claim is received by the Department, the owner or operator may elect to consider the claim to have been denied, and may appeal the denial as provided in Article 3 of Chapter 150B of the General Statutes."

(c) G.S. 143-215.94V reads as rewritten:

"§ 143-215.94V. Standards for petroleum underground storage tank cleanup.

(a) Legislative findings and intent.

(1) The General Assembly finds that:

- a. The goals of the underground storage tank program are to protect human health and the environment. Maintaining the solvency of the Commercial Fund and the Noncommercial Fund is essential to these goals.
- b. The sites at which discharges or releases from underground storage tanks occur vary greatly in terms of complexity, soil types, hydrogeology, other physical and chemical characteristics, current and potential future uses of groundwater, and the degree of risk that each site may pose to human health and the environment.
- c. Risk-based corrective action is a process that recognizes this diversity and utilizes an approach where assessment and remediation activities are specifically tailored to the conditions and risks of a specific site.
- d. Risk-based corrective action gives the State flexibility in requiring different levels of cleanup based on scientific analysis of different site characteristics, and allowing no action or no further action at sites that pose little risk to human health or the environment.
- e. A risk-based approach to the cleanup of environmental damage can adequately protect human health and the environment while preventing excessive or unproductive cleanup efforts, thereby assuring that limited resources are directed toward those sites that pose the greatest risk to human health and the environment.

(2) The General Assembly intends:

- a. To direct the Commission to adopt rules that will provide for risk-based assessment and cleanup of discharges and releases from petroleum underground storage tanks. These rules are intended to combine groundwater standards that protect current and potential future uses of groundwater with risk-based

analysis to determine the appropriate cleanup levels and actions.

- b. That these rules apply to all discharges or releases that are reported on or after the date the rules become effective in order to ascertain whether cleanup is necessary, and if so, the appropriate level of cleanup.
- c. That these rules may be applied to any discharge or release that has been reported at the time the rules become effective at the discretion of the Commission.
- d. That these rules and decisions of the Commission and the Department in implementing these rules facilitate the completion of more cleanups in a shorter period of time.
- e. That neither the Commercial Fund nor the Noncommercial Fund be used to clean up sites where the Commission has determined that a discharge or release poses a degree of risk to human health or the environment that is no greater than the acceptable level of risk established by the Commission.
- f. ~~That until rules implementing a risk-based approach to assessment and cleanup are adopted, the Commission implement the foregoing principles to the maximum extent possible under existing rules.~~

(b) The Commission shall adopt rules to establish a risk-based approach for the assessment, prioritization, and cleanup of discharges and releases from petroleum underground storage tanks. The rules shall address, at a minimum, the circumstances where site-specific information should be considered, criteria for determining acceptable cleanup levels, and the acceptable level or range of levels of risk to human health and the environment.

(c) The Commission may require an owner or operator or a landowner eligible for payment or reimbursement under G.S. 143-215.94E(b1) subsections (b), (b1), (c), and (c1) of G.S. 143-215.94E to provide information necessary to determine the degree of risk to human health and the environment that is posed by a discharge or release from a petroleum underground storage tank.

(d) If the Commission concludes that a discharge or release poses a degree of risk to human health or the environment that is no greater than the acceptable level of risk established by the Commission, the Commission shall notify ~~the an~~ owner, operator, or landowner who ~~makes the determination~~ provides the information required by subsection (c) of this section that no cleanup, further cleanup, or further action will be required unless the Commission later determines that the discharge or release poses an unacceptable level of risk or a potentially unacceptable level of risk to human health or the environment.

(e) If the Commission concludes under subsection (d) of this section that no cleanup, no further cleanup, or no further action will be required, the Department shall not pay or reimburse any costs otherwise payable or reimbursable under this Article from either the Commercial or Noncommercial Fund, other than reasonable and necessary to conduct the risk assessment required by this section, unless:

- (1) Cleanup is ordered or damages are awarded in a finally adjudicated judgment in an action against the owner or landowner.
- (2) Cleanup is required or damages are agreed to in a consent judgment approved by the Department prior to its entry by the court.
- (3) Cleanup is required or damages are agreed to in a settlement agreement approved by the Department prior to its execution by the parties.
- (4) The payment or reimbursement is for costs that were incurred prior to or as a result of notification of a determination by the Commission that no cleanup, no further cleanup, or no action is required.
- (5) The payment or reimbursement is for costs that were incurred as a result of a later determination by the Commission that the discharge or release poses a threat or potential threat to human health or the environment as provided in subsection (d) of this section.
- (f) This section shall not be construed to limit the authority of the Commission to require investigation, initial response, and abatement of a discharge or release pending a determination by the Commission under subsection (d) of this section as to whether cleanup, further cleanup, or further action will be required.

(g) Subsections (c) through (e) of this section apply only to assessments and cleanups in progress or begun on or after ~~the date on which the rules adopted by the Commission pursuant to subsection (b) of this section become effective, 2 January 1998.~~

Section 12. Temporary rules authorized. -- Notwithstanding G.S. 150B-21.1(a)(2) and 26 NCAC 2C.0102(11), the Environmental Management Commission may adopt temporary rules to implement this act until 1 October 1999.

Section 13. Headings for convenience only. -- The headings to the sections of this act are intended as a convenience to the reader and are for reference only. The headings do not expand, limit, or define the text of this act.

Section 14. Effective dates. -- Sections 1, 2, and 3 and subsection (c) of Section 11 of this act are effective retroactively to 2 January 1998 except that subdivision (5) of subsection (c) of Section 1 of this act is effective when this act becomes law. Section 1 of this act expires 1 October 1999. Section 4 of this act is effective retroactively to 1 October 1997. Section 5 and subsection (b) of Section 11 of this act become effective 1 January 1999. Section 6 of this act becomes effective 22 December 1998. Section 7 of this act is effective retroactively to 30 June 1988. Sections 8, 9, 10, 12, 13, 14 and subsection (a) of Section 11 of this act are effective when this act becomes law.

In the General Assembly read three times and ratified this the 17th day of September, 1998.

Became law upon approval of the Governor at 5:29 p.m. on the 28th day of September, 1998.

AN ACT TO LIMIT THE NONRESIDENT WITHHOLDING REQUIREMENT TO ATHLETES AND ENTERTAINERS, TO INCREASE THE THRESHOLD REQUIREMENT FOR NONRESIDENT WITHHOLDING, AND TO PROVIDE A MECHANISM TO ENHANCE COLLECTION OF TAXES FROM NONRESIDENTS ENGAGED IN CONSTRUCTION-RELATED BUSINESSES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-163.1(2) reads as rewritten:

"(2) Contractor. -- Either of the following:

- a. A nonresident individual who performs ~~personal services~~ in this State for compensation other than ~~wages~~. wages any personal services in connection with a performance, an entertainment, an athletic event, a speech, or the creation of a film, radio, or television program.
- b. A nonresident entity that provides for the performance of ~~the following personal services~~ in this State for ~~compensation~~. services compensation of any personal services in connection with a performance, an entertainment, an athletic event, a speech, or the creation of a film, radio, or television program, or the construction or repair of a building or highway, program."

Section 2. Section 4 of S.L. 1997-109 is repealed.

Section 3. G.S. 105-163.3(a), as amended by S.L. 1998-98, reads as rewritten:

"(a) Requirement. -- Every payer who pays a contractor more than ~~six hundred dollars (\$600.00)~~ one thousand five hundred dollars (\$1,500) during a calendar year shall deduct and withhold from compensation paid to the contractor the State income taxes payable by the contractor on the compensation as provided in this section. The amount of taxes to be withheld is four percent (4%) of the compensation paid to the contractor. The taxes a payer withholds are held in trust for the Secretary."

Section 4. Article 1 of Chapter 87 of the General Statutes is amended by adding a new section to read:

"§ 87-10.1. *Licensing of nonresidents.*

(a) Definitions. -- The following definitions apply in this section:

- (1) Delinquent income tax debt. -- The amount of income tax due as stated in a final notice of assessment issued to a taxpayer by the Secretary of Revenue when the taxpayer no longer has the right to contest the amount.
- (2) Foreign corporation. -- Defined in G.S. 55-1-40.
- (3) Reserved.
- (4) Foreign limited liability company. -- Defined in G.S. 57C-1-03.

(b) Licensing. -- The Board shall not issue a certificate of license for a foreign corporation unless the corporation has obtained a certificate of authority from the Secretary of State pursuant to Article 15 of Chapter 55 of

the General Statutes. The Board shall not issue a certificate of license for a foreign limited liability company unless the company has obtained a certificate of authority from the Secretary of State pursuant to Article 7 of Chapter 57C of the General Statutes.

(c) Information. -- Upon request, the Board shall provide the Secretary of Revenue on an annual basis the name, address, and tax identification number of every nonresident individual licensed by the Board. The information shall be provided in the format required by the Secretary of Revenue.

(d) Delinquents. -- If the Secretary of Revenue determines that any nonresident individual licensed by the Board owes a delinquent income tax debt, the Secretary of Revenue may notify the Board of these nonresident individuals and instruct the Board not to renew their certificates of license. The Board shall not renew the certificate of license of such a nonresident individual identified by the Secretary of Revenue unless the Board receives a written statement from the Secretary that the debt either has been paid or is being paid pursuant to an installment agreement."

Section 5. Article 2 of Chapter 87 of the General Statutes is amended by adding a new section to read:

"§ 87-22.2. *Licensing of nonresidents.*

(a) Definitions. -- The following definitions apply in this section:

(1) Delinquent income tax debt. -- The amount of income tax due as stated in a final notice of assessment issued to a taxpayer by the Secretary of Revenue when the taxpayer no longer has the right to contest the amount.

(2) Foreign corporation. -- Defined in G.S. 55-1-40.

(3) Reserved.

(4) Foreign limited liability company. -- Defined in G.S. 57C-1-03.

(b) Licensing. -- The Board shall not issue a license for a foreign corporation unless the corporation has obtained a certificate of authority from the Secretary of State pursuant to Article 15 of Chapter 55 of the General Statutes. The Board shall not issue a license for a foreign limited liability company unless the company has obtained a certificate of authority from the Secretary of State pursuant to Article 7 of Chapter 57C of the General Statutes.

(c) Information. -- Upon request, the Board shall provide the Secretary of Revenue on an annual basis the name, address, and tax identification number of every nonresident individual licensed by the Board. The information shall be provided in the format required by the Secretary of Revenue.

(d) Delinquents. -- If the Secretary of Revenue determines that any nonresident individual licensed by the Board owes a delinquent income tax debt, the Secretary of Revenue may notify the Board of these nonresident individuals and instruct the Board not to renew their licenses. The Board shall not renew the license of such a nonresident individual identified by the Secretary of Revenue unless the Board receives a written statement from the Secretary that the debt either has been paid or is being paid pursuant to an installment agreement."

Section 6. Article 4 of Chapter 87 of the General Statutes is amended by adding a new section to read:

"§ 87-44.2. Licensing of nonresidents.

(a) Definitions. -- The following definitions apply in this section:

- (1) Delinquent income tax debt. -- The amount of income tax due as stated in a final notice of assessment issued to a taxpayer by the Secretary of Revenue when the taxpayer no longer has the right to contest the amount.
- (2) Foreign corporation. -- Defined in G.S. 55-1-40.
- (3) Reserved.
- (4) Foreign limited liability company. -- Defined in G.S. 57C-1-03.

(b) Licensing. -- The Board shall not issue a license for a foreign corporation unless the corporation has obtained a certificate of authority from the Secretary of State pursuant to Article 15 of Chapter 55 of the General Statutes. The Board shall not issue a license for a foreign limited liability company unless the company has obtained a certificate of authority from the Secretary of State pursuant to Article 7 of Chapter 57C of the General Statutes.

(c) Information. -- Upon request, the Board shall provide the Secretary of Revenue on an annual basis the name, address, and tax identification number of every nonresident individual licensed by the Board. The information shall be provided in the format required by the Secretary of Revenue.

(d) Delinquents. -- If the Secretary of Revenue determines that any nonresident individual licensed by the Board owes a delinquent income tax debt, the Secretary of Revenue may notify the Board of these nonresident individuals and instruct the Board not to renew their licenses. The Board shall not renew the license of such a nonresident individual identified by the Secretary of Revenue unless the Board receives a written statement from the Secretary that the debt either has been paid or is being paid pursuant to an installment agreement."

Section 7. Chapter 89C of the General Statutes is amended by adding a new section to read:

"§ 89C-18.1. Licensing of nonresidents.

(a) Definitions. -- The following definitions apply in this section:

- (1) Delinquent income tax debt. -- The amount of income tax due as stated in a final notice of assessment issued to a taxpayer by the Secretary of Revenue when the taxpayer no longer has the right to contest the amount.
- (2) Foreign corporation. -- Defined in G.S. 55-1-40.
- (3) Reserved.
- (4) Foreign limited liability company. -- Defined in G.S. 57C-1-03.

(b) Licensing. -- The Board shall not renew a certificate of licensure for a foreign corporation unless the corporation has obtained a certificate of authority from the Secretary of State pursuant to Article 15 of Chapter 55 of the General Statutes. The Board shall not renew a certificate of licensure for a foreign limited liability company unless the company has obtained a certificate of authority from the Secretary of State pursuant to Article 7 of Chapter 57C of the General Statutes.

(c) Information. -- Upon request, the Board shall provide the Secretary of Revenue on an annual basis the name, address, and tax identification number of every nonresident individual licensed by the Board. The information shall be provided in the format required by the Secretary of Revenue.

(d) Delinquents. -- If the Secretary of Revenue determines that any nonresident individual licensed by the Board owes a delinquent income tax debt, the Secretary of Revenue may notify the Board of these nonresident individuals and instruct the Board not to renew their certificates of licensure. The Board shall not renew the certificate of licensure of such a nonresident individual identified by the Secretary of Revenue unless the Board receives a written statement from the Secretary that the debt either has been paid or is being paid pursuant to an installment agreement."

Section 8. G.S. 150B-3(d) reads as rewritten:

"(d) This section does not apply to ~~revocations~~ the following:

- (1) Revocations of occupational licenses based solely on a court order of child support delinquency or a Department of Health and Human Services determination of child support delinquency issued pursuant to G.S. 110-142, 110-142.1, or 110-142.2.
- (2) Refusal to renew an occupational license pursuant to G.S. 87-10.1, 87-22.2, 87-44.2, or 89C-18.1, based solely on a Department of Revenue determination that the licensee owes a delinquent income tax debt."

Section 9. G.S. 93B-14 reads as rewritten:

"§ 93B-14. *Information on applicants for licensure.*

Every occupational licensing board shall require applicants for licensure to provide to the Board the applicant's social security number. This information shall be treated as confidential and may be released only ~~to~~ as follows:

- (1) To the State Child Support Enforcement Program of the Department of Health and Human Services upon its request and for the purpose of enforcing a child support order.
- (2) To the Department of Revenue for the purpose of administering the State's tax laws."

Section 10. G.S. 87-10.1, as enacted by this act, reads as rewritten:

"§ 87-10.1. *Licensing of nonresidents.*

(a) Definitions. -- The following definitions apply in this section:

- (1) Delinquent income tax debt. -- The amount of income tax due as stated in a final notice of assessment issued to a taxpayer by the Secretary of Revenue when the taxpayer no longer has the right to contest the amount.
- (2) Foreign corporation. -- Defined in G.S. 55-1-40.
- (3) Foreign entity. -- A foreign corporation, a foreign limited liability company, or a foreign partnership.
- (4) Foreign limited liability company. -- Defined in G.S. 57C-1-03.
- (5) Foreign partnership. -- Either of the following that does not have a permanent place of business in this State:
 - a. A foreign limited partnership as defined in G.S. 59-102.

b. A general partnership formed under the laws of a jurisdiction other than this State.

(b) Licensing. -- The Board shall not issue a certificate of license for a foreign corporation unless the corporation has obtained a certificate of authority from the Secretary of State pursuant to Article 15 of Chapter 55 of the General Statutes. The Board shall not issue a certificate of license for a foreign limited liability company unless the company has obtained a certificate of authority from the Secretary of State pursuant to Article 7 of Chapter 57C of the General Statutes.

(c) Information. -- Upon request, the Board shall provide the Secretary of Revenue on an annual basis the name, address, and tax identification number of every nonresident individual and foreign entity licensed by the Board. The information shall be provided in the format required by the Secretary of Revenue.

(d) Delinquents. -- If the Secretary of Revenue determines that any nonresident individual or foreign corporation licensed by the board, a member of any foreign limited liability company licensed by the Board, or a partner in any foreign partnership licensed by the Board, licensed by the Board owes a delinquent income tax debt, the Secretary of Revenue may notify the Board of these nonresident individuals and foreign entities and instruct the Board not to renew their certificates of license. The Board shall not renew the certificate of license of such a nonresident individual or foreign entity identified by the Secretary of Revenue unless the Board receives a written statement from the Secretary that the debt either has been paid or is being paid pursuant to an installment agreement."

Section 11. G.S. 87-22.2, as enacted by this act, reads as rewritten:
 "§ 87-22.2. *Licensing of nonresidents.*

(a) Definitions. -- The following definitions apply in this section:

- (1) Delinquent income tax debt. -- The amount of income tax due as stated in a final notice of assessment issued to a taxpayer by the Secretary of Revenue when the taxpayer no longer has the right to contest the amount.
- (2) Foreign corporation. -- Defined in G.S. 55-1-40.
- (3) Foreign entity. -- A foreign corporation, a foreign limited liability company, or a foreign partnership.
- (4) Foreign limited liability company. -- Defined in G.S. 57C-1-03.
- (5) Foreign partnership. -- Either of the following that does not have a permanent place of business in this State:
 - a. A foreign limited partnership as defined in G.S. 59-102.
 - b. A general partnership formed under the laws of a jurisdiction other than this State.

(b) Licensing. -- The Board shall not issue a license for a foreign corporation unless the corporation has obtained a certificate of authority from the Secretary of State pursuant to Article 15 of Chapter 55 of the General Statutes. The Board shall not issue a license for a foreign limited liability company unless the company has obtained a certificate of authority from the Secretary of State pursuant to Article 7 of Chapter 57C of the General Statutes.

(c) Information. -- Upon request, the Board shall provide the Secretary of Revenue on an annual basis the name, address, and tax identification number of every nonresident individual and foreign entity licensed by the Board. The information shall be provided in the format required by the Secretary of Revenue.

(d) Delinquents. -- If the Secretary of Revenue determines that any nonresident individual or foreign corporation licensed by the Board, a member of any foreign limited liability company licensed by the Board, or a partner in any foreign partnership licensed by the Board, licensed by the Board owes a delinquent income tax debt, the Secretary of Revenue may notify the Board of these nonresident individuals and foreign entities and instruct the Board not to renew their licenses. The Board shall not renew the license of such a nonresident individual or foreign entity identified by the Secretary of Revenue unless the Board receives a written statement from the Secretary that the debt either has been paid or is being paid pursuant to an installment agreement."

Section 12. G.S. 87-44.2, as enacted by this act, reads as rewritten:
 "§ 87-44.2. *Licensing of nonresidents.*

(a) Definitions. -- The following definitions apply in this section:

- (1) Delinquent income tax debt. -- The amount of income tax due as stated in a final notice of assessment issued to a taxpayer by the Secretary of Revenue when the taxpayer no longer has the right to contest the amount.
- (2) Foreign corporation. -- Defined in G.S. 55-1-40.
- (3) Foreign entity. -- A foreign corporation, a foreign limited liability company, or a foreign partnership.
- (4) Foreign limited liability company. -- Defined in G.S. 57C-1-03.
- (5) Foreign partnership. -- Either of the following that does not have a permanent place of business in this State:
 - a. A foreign limited partnership as defined in G.S. 59-102.
 - b. A general partnership formed under the laws of a jurisdiction other than this State.

(b) Licensing. -- The Board shall not issue a license for a foreign corporation unless the corporation has obtained a certificate of authority from the Secretary of State pursuant to Article 15 of Chapter 55 of the General Statutes. The Board shall not issue a license for a foreign limited liability company unless the company has obtained a certificate of authority from the Secretary of State pursuant to Article 7 of Chapter 57C of the General Statutes.

(c) Information. -- Upon request, the Board shall provide the Secretary of Revenue on an annual basis the name, address, and tax identification number of every nonresident individual and every foreign entity licensed by the Board. The information shall be provided in the format required by the Secretary of Revenue.

(d) Delinquents. -- If the Secretary of Revenue determines that any nonresident individual licensed by the Board or foreign corporation licensed by the Board, a member of any foreign limited liability company licensed by the Board, or a partner in any foreign partnership licensed by the Board, owes a delinquent income tax debt, the Secretary of Revenue may notify the

Board of these nonresident individuals and foreign entities and instruct the Board not to renew their licenses. The Board shall not renew the license of such a nonresident individual or foreign entity identified by the Secretary of Revenue unless the Board receives a written statement from the Secretary that the debt either has been paid or is being paid pursuant to an installment agreement."

Section 13. G.S. 89C-18.1, as enacted by this act, reads as rewritten:

"§ 89C-18.1. *Licensing of nonresidents.*

(a) Definitions. -- The following definitions apply in this section:

- (1) Delinquent income tax debt. -- The amount of income tax due as stated in a final notice of assessment issued to a taxpayer by the Secretary of Revenue when the taxpayer no longer has the right to contest the amount.
- (2) Foreign corporation. -- Defined in G.S. 55-1-40.
- (3) Foreign entity. -- A foreign corporation, a foreign limited liability company, or a foreign partnership.
- (4) Foreign limited liability company. -- Defined in G.S. 57C-1-03.
- (5) Foreign partnership. -- Either of the following that does not have a permanent place of business in this State:
 - a. A foreign limited partnership as defined in G.S. 59-102.
 - b. A general partnership formed under the laws of a jurisdiction other than this State.

(b) Licensing. -- The Board shall not renew a certificate of licensure for a foreign corporation unless the corporation has obtained a certificate of authority from the Secretary of State pursuant to Article 15 of Chapter 55 of the General Statutes. The Board shall not renew a certificate of licensure for a foreign limited liability company unless the company has obtained a certificate of authority from the Secretary of State pursuant to Article 7 of Chapter 57C of the General Statutes.

(c) Information. -- Upon request, the Board shall provide the Secretary of Revenue on an annual basis the name, address, and tax identification number of every nonresident individual and foreign entity licensed by the Board. The information shall be provided in the format required by the Secretary of Revenue.

(d) Delinquents. -- If the Secretary of Revenue determines that any nonresident individual ~~licensed by the Board~~ or foreign corporation licensed by the Board, a member of any foreign limited liability company licensed by the Board, or a partner in any foreign partnership licensed by the Board, owes a delinquent income tax debt, the Secretary of Revenue may notify the Board of these nonresident individuals and foreign entities and instruct the Board not to renew their certificates of licensure. The Board shall not renew the certificate of licensure of such a nonresident individual or foreign entity identified by the Secretary of Revenue unless the Board receives a written statement from the Secretary that the debt either has been paid or is being paid pursuant to an installment agreement."

Section 14. Sections 1 through 3 of this act are effective retroactively as of January 1, 1998. Notwithstanding Sections 1, 2, and 3 of this act, any tax withheld under G.S. 105-163.3 may be repaid to the person from

whom the tax was withheld only as provided in G.S. 105-163.3(f). Sections 10 through 13 of this act become effective July 1, 2000. The remainder of this act becomes effective July 1, 1999.

In the General Assembly read three times and ratified this the 18th day of September, 1998.

Became law upon approval of the Governor at 5:31 p.m. on the 28th day of September, 1998.

H.B. 55

SESSION LAW 1998-163

AN ACT TO ELIMINATE THE FEE FOR PURPLE HEART REGISTRATION PLATES, TO REQUIRE THE DIVISION OF MOTOR VEHICLES TO REDESIGN THE PURPLE HEART PLATE, AND TO AUTHORIZE THE DIVISION OF MOTOR VEHICLES TO ISSUE A SPECIAL REGISTRATION PLATE TO A RECIPIENT OF THE SILVER STAR, TO A RECIPIENT OF THE BRONZE STAR, AND TO A RECIPIENT OF THE DISTINGUISHED FLYING CROSS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-79.7(a) reads as rewritten:

"(a) Fees. -- Upon request, the Division shall provide and issue free of charge one registration plate to a recipient of the Congressional Medal of Honor, a 100% disabled veteran, and an ex-prisoner of war. All other special registration plates are subject to the regular motor vehicle registration fee in G.S. 20-87 or G.S. 20-88 plus an additional fee in the following amount:

<u>Special Plate</u>	<u>Additional Fee Amount</u>
Historical Attraction	\$30.00
State Attraction	\$30.00
Collegiate Insignia	\$25.00
Olympic Games	\$25.00
Special Olympics	\$25.00
March of Dimes	\$20.00
Scenic Rivers	\$20.00
School Technology	\$20.00
Soil and Water Conservation	\$20.00
Wildlife Resources	\$20.00
Personalized	\$20.00
Active Member of the National Guard	None
<u>Purple Heart Recipient</u>	<u>None</u>
All Other Special Plates	\$10.00."

Section 2. The Division of Motor Vehicles shall complete a redesign of the Purple Heart special license plate by January 1, 1999. The Division shall consult interested groups and other state divisions of motor vehicles about the design to ensure that the plate accurately reflects the appearance of the Purple Heart award. The Division shall use funds already appropriated to the Division to fund the design.

Section 3. G.S. 20-79.4(b) is amended by adding a new subdivision to read:

"(3a) Bronze Star Recipient. -- Issuable to a recipient of the Bronze Star. The plate shall bear the emblem of the Bronze Star and the words "Bronze Star"."

Section 4. G.S. 20-79.4(b) is amended by adding a new subdivision to read:

"(39a) Silver Star Recipient. -- Issuable to a recipient of the Silver Star. The plate shall bear the emblem of the Silver Star and the words "Silver Star"."

Section 5. G.S. 20-79.4(b) is amended by adding a new subdivision to read:

"(12a) Distinguished Flying Cross. -- Issuable to a recipient of the Distinguished Flying Cross. The plate shall bear the emblem of the Distinguished Flying Cross and the words "Distinguished Flying Cross"."

Section 6. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 22nd day of September, 1998.

Became law upon approval of the Governor at 10:15 a.m. on the 29th day of September, 1998.

S.B. 1262

SESSION LAW 1998-164

AN ACT TO APPROPRIATE FUNDS FOR ATTORNEYS FEES IN A CASE CHALLENGING THE 1992 CONGRESSIONAL REDISTRICTING PLAN AND TO AUTHORIZE THE TRANSFER OF FUNDS TO THE RESERVE FUND FOR THE BAILEY/EMORY/PATTON CASES REFUNDS.

The General Assembly of North Carolina enacts:

Section 1. (a) There is established a special reserve fund in the Office of State Budget and Management to compensate the law firm of Maupin Taylor & Ellis, P.A. for its representation of Art Pope and others in the case of Pope v. Hunt, which is a challenge to the congressional redistricting plan adopted by the 1991 General Assembly. The fund shall be entitled "Reserve for Attorneys Fees in the Case of Pope v. Hunt."

(b) There is appropriated from the General Fund to the Office of State Budget and Management the sum of five hundred fifty thousand dollars (\$550,000) for the 1998-99 fiscal year. The Director of the Budget shall allocate the funds from the Reserve for Attorneys Fees in the Case of Pope v. Hunt pursuant to the order entered in the case of Pope v. Hunt (97-1697, 4th Circuit Court of Appeals).

(c) Any funds remaining in the reserve established pursuant to this section after the firm of Maupin Taylor & Ellis, P.A. has been compensated pursuant to the Court's order shall revert to the General Fund.

Section 2. There is established in the Office of State Treasurer a Reserve Fund for the Bailey/Emory/Patton Cases Refunds.

There is transferred from General Fund overcollections for the 1997-98 fiscal year to the Office of State Treasurer, Reserve for the Bailey/Emory/Patton Cases Refunds, the sum of four hundred million

dollars (\$400,000,000). These funds are hereby appropriated and shall be held in reserve and allocated pursuant to the Consent Order entered in the Bailey/Emory/Patton cases, 92 CVS 10221, 94 CVS 06904, 95 CVS 06625, 95 CVS 08230, 98 CVS 00738, and 95 CVS 04346, in Wake County Superior Court on 10 June 1998.

Notwithstanding the provisions of G.S. 114-2.1 and G.S. 114-2.2, the Consent Order shall be effective when approved by the Court and the Governor signs this legislation into law.

Section 3. This act becomes effective July 1, 1998.

In the General Assembly read three times and ratified this the 30th day of September, 1998.

Became law upon approval of the Governor at 8:32 p.m. on the 30th day of September, 1998.

S.B. 1285

SESSION LAW 1998-165

AN ACT TO EXEMPT THE TRANSPORTATION OF CERTAIN AGRICULTURAL PRODUCTS FROM VARIOUS REQUIREMENTS IN CONFORMITY WITH FEDERAL REGULATIONS AND TO AUTHORIZE THE SOIL AND WATER CONSERVATION COMMISSION TO ADOPT TEMPORARY RULES TO IMPLEMENT THE CONSERVATION RESERVE ENHANCEMENT PROGRAM.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-381 reads as rewritten:

"§ 20-381. *Specific powers and duties of Division applicable to motor ~~carriers~~ carriers; agricultural exemption.*

(a) The Division has the following powers and duties concerning motor carriers:

- (1) To prescribe qualifications and maximum hours of service of drivers and their helpers.
- (1a) To set safety standards for vehicles of motor carriers engaged in foreign, interstate, or intrastate commerce over the highways of this State and for the safe operation of these vehicles. The Division may stop, enter upon, and perform inspections of motor carriers' vehicles in operation to determine compliance with these standards and may conduct any investigations and tests it finds necessary to promote the safety of equipment and the safe operation on the highway of these vehicles.
- (1b) To enforce this Article, rules adopted under this Article, and the federal safety regulations.
- (2) To enter the premises of a motor carrier to inspect a motor vehicle or any equipment used by the motor carrier in transporting passengers [or property].
- (2a) To prohibit the use by a motor carrier of any motor vehicle or motor vehicle equipment the Division finds unsafe for use in the transportation of passengers or property on a highway. If an agent of the Division finds a motor vehicle of a motor carrier in actual use upon the highways in the transportation of passengers

or property to be unsafe or any parts thereof or any equipment thereon to be unsafe and is of the opinion that further use of such vehicle, parts or equipment are imminently dangerous, the agent may require the operator thereof to discontinue its use and to substitute therefor a safe vehicle, parts or equipment at the earliest possible time and place, having regard for both the convenience and the safety of the passengers or property. When an inspector or agent stops a motor vehicle on the highway, under authority of this section, and the motor vehicle is in operative condition and its further movement is not dangerous to the passengers or property or to the users of the highways, it shall be the duty of the inspector or agent to guide the vehicle to the nearest point of substitution or correction of the defect. Such agents or inspectors shall also have the right to stop any motor vehicle which is being used upon the public highways for the transportation of passengers or property by a motor carrier subject to the provisions of this Article and to eject therefrom any driver or operator who shall be operating or be in charge of such motor vehicle while under the influence of alcoholic beverages. It shall be the duty of all inspectors and agents of the Division to make a written report, upon a form prescribed by the Division, of inspections of all motor equipment and a copy of each such written report, disclosing defects in such equipment, shall be served promptly upon the motor carrier operating the same, either in person by the inspector or agent or by mail. Such agents and inspectors shall also make and serve a similar written report in cases where a motor vehicle is operated in violation of this Chapter or, if the motor vehicle is subject to regulation by the North Carolina Utilities Commission, of Chapter 62 of the General Statutes.

- (3) To relieve the highways of all undue burdens and safeguard traffic thereon by adopting and enforcing rules and orders designed and calculated to minimize the dangers attending transportation on the highways of all hazardous materials and other commodities.

(b) The definitions set out in 49 Code of Federal Regulations § 171.8 apply to this subsection. Citations to the Code of Federal Regulations (CFR) in this subsection refer to the 1 October 1997 Edition of the CFR. The transportation of an agricultural product, other than a Class 2 material, over local roads between fields of the same farm by a farmer operating as an intrastate private motor carrier is exempt from the requirements of Parts 171 through 180 of 49 CFR as provided in 49 CFR § 173.5(a). The transportation of an agricultural product to or from a farm within 150 miles of the farm by a farmer operating as an intrastate private motor carrier is exempt from the requirements of Subparts G and H of Part 172 of 49 CFR as provided in 49 CFR § 173.5(b)."

Section 2. The Soil and Water Conservation Commission may adopt temporary rules to implement the Conservation Reserve Enhancement

Program. This section shall constitute a recent act of the General Assembly for purposes of G.S. 150B-21.1(a)(2).

Section 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 30th day of September, 1998.

Became law upon approval of the Governor at 9:15 p.m. on the 30th day of September, 1998.

H.B. 900

SESSION LAW 1998-166

AN ACT TO APPROPRIATE FUNDS FOR FEDERAL MATCHING FUNDS FOR THE DEPARTMENT OF CRIME CONTROL AND PUBLIC SAFETY AND WASTEWATER AND WATER SUPPLY MATCHING FUNDS FOR THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES, TO APPROPRIATE FUNDS FOR CAPITAL APPROPRIATIONS FOR THE DEPARTMENT OF ADMINISTRATION AND THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES, TO AUTHORIZE A TRANSFER OF FUNDS TO MEET TANF MAINTENANCE OF EFFORT REQUIREMENTS, TO PROVIDE THAT IT IS THE INTENT OF THE GENERAL ASSEMBLY THAT EXCESS TANF FUNDS BE USED TO CONTINUE THE IMPLEMENTATION OF FIRST STOP EMPLOYMENT ASSISTANCE, TO APPROPRIATE FEDERAL BLOCK GRANT FUNDS FOR THE WELFARE TO WORK FORMULA GRANT PLAN, TO PROVIDE FOR WATER RESOURCES DEVELOPMENT PROJECTS, TO AMEND THE CARING PROGRAM FOR CHILDREN STATUTE ON THE UNINSURED, AND TO PROVIDE A MENTAL HEALTH RESERVE MATCH FOR MEDICAID.

The General Assembly of North Carolina enacts:

CURRENT OPERATIONS APPROPRIATION/GENERAL FUND

Section 1. Appropriations from the General Fund of the State for the maintenance of the State departments, institutions, and agencies, and for other purposes as enumerated are made for the fiscal year ending June 30, 1999, according to the schedule that follows.

Current Operations - General Fund

1998-99

Department of Crime Control and Public
Safety -- Matching Funds for the National
Guard Tarheel Challenge Program

\$ 542,000 NR

Department of Environment and Natural Resources

01. Federal Wastewater Assistance --
Matching Funds

4,860,532 NR

02. Federal Water Supply Assistance --
Matching Funds

2,571,880 NR

TOTAL -- Department of Environment and Natural Resources 7,432,412 NR

TOTAL: Current Operations - General Fund \$7,974,412 NR

CAPITAL APPROPRIATIONS/GENERAL FUND

Section 2. Appropriations are made from the General Fund of the State for the 1998-99 fiscal year for use by the State departments, institutions, and agencies to provide for capital improvement projects according to the following schedule:

Capital Improvements - General Fund

1998-99

Department of Administration, Reserve for State Veterans Nursing Home -- Salisbury Renovation of a 100-bed nursing care unit	\$1,000,000
Department of Environment and Natural Resources	
01. State Match-Water Resources Projects -- Funds for the State share of federal civil works projects	\$5,240,000
02. Channel Widening/Deepening-Wilmington Port -- Funds to improve navigation for shipping terminals and industries	\$4,800,000
03. B. Everett Jordan Lake Water Supply -- repayment of State cost-share funds for federal funds previously expended	\$ 110,000
TOTAL: Capital Improvements - General Fund	\$11,150,000

AUTHORIZE TRANSFER TO MEET TANF MAINTENANCE OF EFFORT REQUIREMENTS

Section 3. Notwithstanding any other provision of law to the contrary, to the extent necessary to meet federal maintenance of effort requirements for Temporary Assistance for Needy Families (TANF), the Department of Health and Human Services may, for the first quarter of the 1998-99 fiscal year only, use State funds for the TANF Work First Family Assistance.

FIRST STOP EMPLOYMENT ASSISTANCE/ APPROPRIATE FEDERAL BLOCK GRANT FUNDS FOR WELFARE TO WORK FORMULA GRANT PLAN

Section 4. (a) It is the intent of the General Assembly that excess Temporary Assistance for Needy Families (TANF) funds up to twenty-five million three hundred thirty-two thousand one hundred seventy-three dollars (\$25,332,173) be used to continue the implementation of First Stop Employment Assistance, established pursuant to G.S. 108A-29. The Employment Security Commission shall implement this initiative in consultation with the Department of Commerce, the Department of Health and Human Services, and the Department of Community Colleges.

(b) Section 12.20A(b) of S.L. 1997-443 reads as rewritten:

"(b) The Department of Commerce, the Employment Security Commission, and the Department of Health and Human Services shall develop a plan to implement the Welfare-to-Work initiative in this State, develop performance goals and measures for this initiative, and estimate the cost impact on the State budget for the next five years of implementing the initiative. The Department of Commerce, the Employment Security Commission, and the Department of Health and Human Services shall report to the General Assembly its findings and recommendations by April 1, 1998. ~~The Department of Commerce shall not expend any State or federal funds for the Welfare-to-Work initiative until the amended State Plan is submitted to the General Assembly and the amended State Plan becomes law.~~"

(c) There is appropriated to the Department of Commerce from federal Welfare to Work Block Grant funds for the fiscal year ending June 30, 1999, the sum of twenty-five million three hundred thirty-two thousand one hundred seventy-three dollars (\$25,332,173). The Office of State Budget and Management may identify potential sources of State and local funds that may be used as a match for the federal Welfare-to-Work Block Grant, except that funds identified may be used as a match only to the extent that the funds are not needed to meet federal TANF maintenance of effort requirements and only to the extent that the funds will not reduce funds obligated or appropriated for Work First County Block Grants and child welfare services.

WATER RESOURCES DEVELOPMENT PROJECTS FUNDS

Section 5. (a) The Department of Environment and Natural Resources shall allocate the funds appropriated in this act for water resources development projects to the following projects whose estimated costs are as indicated:

Name of Project

1. Morehead City Harbor Turning Basin	\$ 2,000,000
2. Wilmington Harbor Maintenance Dredging	200,000
3. Wilmington Harbor Long-Term Disposal	1,400,000
4. Beaufort Harbor Maintenance Dredging	80,000
5. Manteo Shallowbag Bay Maintenance Dredging	200,000
6. Rollinson Channel Maintenance Dredging (Dare County)	400,000
8. Pine Knolls Shores Protection (Carteret Co.)	200,000
9. Tar River Road Streambank Protection	50,000

(City of Greenville)

10. Battery Island Bird Habitat Restoration (Brunswick County)	140,000
11. Dare County Beaches Feasibility Study	70,000
12. Deep Creek Watershed Project (Yadkin Co.)	500,000
Total	\$ 5,240,000

(b) Where the actual costs are different from the estimated costs under subsection (a) of this section, the Department may adjust the allocations among projects as needed. If any projects listed in subsection (a) of this section are delayed and the budgeted State funds cannot be used during the 1998-99 fiscal year, or if the projects listed in subsection (a) of this section are accomplished at a lower cost, the Department may use the resulting fund availability to fund any of the following:

- (1) Corps of Engineers project feasibility studies.
- (2) Corps of Engineers projects whose schedules have advanced and require State matching funds in fiscal year 1998-99.
- (3) State-local water resources development projects.

Funds not expended or encumbered for these purposes shall revert to the General Fund at the end of the 1999-2000 fiscal year.

(c) The Department shall make quarterly reports on the use of these funds to the Joint Legislative Commission on Governmental Operations, the Fiscal Research Division, and the Office of State Budget and Management. Each report shall include all of the following:

- (1) All projects listed in this section.
- (2) The estimated cost of each project.
- (3) The date that work on each project began or is expected to begin.
- (4) The date that work on each project was completed or is expected to be completed.
- (5) The actual cost of each project.

The quarterly reports shall also show those projects advanced in schedule, those projects delayed in schedule, and an estimate of the amount of funds expected to revert to the General Fund.

CARING PROGRAM FOR CHILDREN

Section 6. G.S. 108A-70.18(8), as enacted by Section 1 of S.L. 1998-1 Extra Session, reads as rewritten:

- "(8) 'Uninsured' means the applicant for Program benefits was not covered under any private or employer-sponsored comprehensive health insurance plan for the six-month period immediately preceding the date ~~the Program becomes effective, of application for Program benefits. Effective six months from date the Program becomes effective,~~ April 1, 1999, 'uninsured' means the applicant is and was not covered under any private or employer-sponsored comprehensive health insurance plan for 60 days immediately preceding the date of application. The waiting

periods required under this subdivision shall be waived if the child has been enrolled in Medicaid and has lost Medicaid eligibility due to a change in family income eligibility, has lost health care benefits due to cessation of a nonprofit organization program that provides health care benefits to low-income children, or has lost employer-sponsored comprehensive health care coverage due to termination of employment, cessation by the employer of employer-sponsored health coverage, or cessation of the employer's business."

MENTAL HEALTH RESERVE FOR MEDICAID MATCH

Section 7. There is appropriated from the General Fund to the Department of Health and Human Services the sum of thirty-eight million dollars (\$38,000,000) for the 1998-99 fiscal year. These funds shall be placed in a Mental Health Restricted Reserve in the Office of the Controller of the Department of Health and Human Services. In addition to these funds, the Department shall transfer to the Mental Health Restricted Reserve from the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, the total amount of funds in the Division's budget allocated as matching funds for Medicaid payments to area mental health authorities for the 1998-99 fiscal year. Funds in the Reserve that are unexpended and unencumbered as of June 30, 1999, shall revert to the General Fund. This appropriation shall become part of the continuation budget.

MOST TEXT APPLIES ONLY TO 1998-99

Section 8. Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1998-99 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1998-99 fiscal year.

1997-98 APPROPRIATIONS LIMITATIONS AND DIRECTIONS APPLY

Section 9. (a) Except where expressly repealed or amended by this act, the provisions of S.L. 1997-443, S.L. 1998-1 Extra Session, S.L. 1998-9, S.L. 1998-23, and S.L. 1998-153 remain in effect.

(b) Notwithstanding any modifications by this act in the amounts appropriated, except where expressly repealed or amended, the limitations and directions for the 1998-99 fiscal year in S.L. 1997-443, S.L. 1998-1 Extra Session, S.L. 1998-9, S.L. 1998-23, and S.L. 1998-153 that applied to appropriations to particular agencies or for particular purposes apply to the newly enacted appropriations of this act for those same particular purposes.

EFFECT OF HEADINGS

Section 10. The headings to the sections of this act are a convenience to the reader and are for reference only. The headings do not expand, limit, or define the text of this act.

SEVERABILITY CLAUSE

Section 11. If any section or provision of this act is declared unconstitutional or invalid by the courts, it does not affect the validity of this act as a whole or any part other than the part so declared to be unconstitutional or invalid.

EFFECTIVE DATE

Section 12. Except as otherwise provided, this act becomes effective July 1, 1998.

In the General Assembly read three times and ratified this the 30th day of September, 1998.

Became law upon approval of the Governor at 11:59 p.m. on the 30th day of September, 1998.

S.B. 1594

SESSION LAW 1998-167**AN ACT TO IMPOSE TEACHER CERTIFICATION FEES.**

The General Assembly of North Carolina enacts:

Section 1. G.S. 115C-296 is amended by adding a new subsection to read:

"(a2) The State Board of Education shall impose the following schedule of fees for teacher certification and administrative changes:

- (1) Application for demographic or administrative changes to a certificate, \$30.00.
- (2) Application for a duplicate certificate or for copies of documents in the certification files, \$30.00.
- (3) Application for a renewal, extension, addition, upgrade, and variation to a certificate, \$55.00.
- (4) Initial application for New, In-State Approved Program Graduate, \$55.00.
- (5) Initial application for Out-of-State certificate, \$85.00.
- (6) All other applications, \$85.00.

The applicant must pay the fee at the time the application is submitted."

Section 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 24th day of September, 1998.

Became law upon approval of the Governor at 10:00 a.m. on the 2nd day of October, 1998.

S.B. 1299

SESSION LAW 1998-168**AN ACT TO AMEND THE LAWS REGARDING THE WITHDRAWAL AND TRANSFER OF SURFACE WATERS AND THE STATE WATER SUPPLY PLAN.**

The General Assembly of North Carolina enacts:

Section 1. G.S. 143-211 reads as rewritten:

"§ 143-211. Declaration of public policy.

(a) It is hereby declared to be the public policy of this State to provide for the conservation of its water and air resources. Furthermore, it is the intent of the General Assembly, within the context of this Article and Articles 21A and 21B of this Chapter, to achieve and to maintain for the citizens of the State a total environment of superior quality. Recognizing that the water and air resources of the State belong to the people, the General Assembly affirms the State's ultimate responsibility for the preservation and development of these resources in the best interest of all its citizens and declares the prudent utilization of these resources to be essential to the general welfare.

(b) It is the public policy of the State to maintain, protect, and enhance water quality within North Carolina. Further, it is the public policy of the State that the cumulative impact of transfers from a source river basin shall not result in a violation of the antidegradation policy set out in 40 Code of Federal Regulations § 131.12 (1 July 1997 Edition) and the statewide antidegradation policy adopted pursuant thereto.

(c) It is the purpose of this Article to create an agency which shall administer a program of water and air pollution control and water resource management. It is the intent of the General Assembly, through the duties and powers defined herein, to confer such authority upon the Department of Environment and Natural Resources as shall be necessary to administer a complete program of water and air conservation, pollution abatement and control and to achieve a coordinated effort of pollution abatement and control with other jurisdictions. Standards of water and air purity shall be designed to protect human health, to prevent injury to plant and animal life, to prevent damage to public and private property, to insure the continued enjoyment of the natural attractions of the State, to encourage the expansion of employment opportunities, to provide a permanent foundation for healthy industrial development and to secure for the people of North Carolina, now and in the future, the beneficial uses of these great natural resources. It is the intent of the General Assembly that the powers and duties of the Environmental Management Commission and the Department of Environment and Natural Resources be construed so as to enable the Department and the Commission to qualify to administer federally mandated programs of environmental management and to qualify to accept and administer funds from the federal government for such programs."

Section 2. G.S. 143-215.8B(a) reads as rewritten:

"(a) The Commission shall develop and implement a basinwide water quality management plan for each of the 17 major river basins in the State. In developing and implementing each plan, the Commission shall consider the cumulative impacts of all of the following:

- (1) All activities across a river basin and all point sources and nonpoint sources of pollutants, including municipal wastewater facilities, industrial wastewater systems, septic tank systems, stormwater management systems, golf courses, farms that use fertilizers and pesticides for crops, public and commercial lawns and gardens, atmospheric deposition, and animal operations.
- (2) All transfers into and from a river basin that are required to be registered under G.S 143-215.22H."

Section 3. G.S. 143-215.22H reads as rewritten:

"§ 143-215.22H. *Registration of water withdrawals and transfers required.*

(a) Any person who withdraws ~~1,000,000~~ 100,000 gallons per day or more of water from the surface or groundwaters of the State or who transfers ~~1,000,000~~ 100,000 gallons per day or more of water from one river basin to another shall register the withdrawal or transfer with the Commission. A person registering a water withdrawal or transfer shall provide the Commission with the following information:

- (1) The maximum daily amount of the water withdrawal or transfer expressed in ~~millions~~ thousands of gallons per day.
- (1a) The monthly average withdrawal or transfer expressed in ~~millions~~ thousands of gallons per day.
- (2) The location of the points of withdrawal and discharge and the capacity of each facility used to make the withdrawal or transfer.
- (3) The monthly average discharge expressed in ~~millions~~ thousands of gallons per day.

(b) Any person initiating a new water withdrawal or transfer of ~~1,000,000~~ 100,000 gallons per day or more shall register the withdrawal or transfer with the Commission not later than six months after the initiation of the withdrawal or transfer. The information required under subsection (a) of this section shall be submitted with respect to the new withdrawal or transfer.

(b1) Subsections (a) and (b) of this section shall not apply to a person who withdraws or transfers less than 1,000,000 gallons per day of water for activities directly related or incidental to the production of crops, fruits, vegetables, ornamental and flowering plants, dairy products, livestock, poultry, and other agricultural products.

(c) A unit of local government that has completed a local water supply plan that meets the requirements of G.S. 143-355(l) and that has periodically revised and updated its plan as required by the Department has satisfied the requirements of this section and is not required to separately register a water withdrawal or transfer or to update a registration under this section.

(d) Any person who is required to register a water withdrawal or transfer under this section shall update the registration by providing the Commission with a current version of the information required by subsection (a) of this section at five-year intervals following the initial registration. A person who submits information to update a registration of a water withdrawal or transfer is not required to pay an additional registration fee under G.S. 143-215.3(a)(1a) and G.S. 143-215.3(a)(1b), but is subject to the late registration fee established under this section in the event that updated information is not submitted as required by this subsection.

(e) Any person who is required to register a water transfer or withdrawal under this section and fails to do so shall pay, in addition to the registration fee required under G.S. 143-215.3(a)(1a) and G.S. 143-215.3(a)(1b), a late registration fee of five dollars (\$5.00) per day for each day the registration is late up to a maximum of five hundred dollars (\$500.00). A person who is required to update a registration under this section and fails to do so shall pay a fee of five dollars (\$5.00) per day for each day the updated

information is late up to a maximum of five hundred dollars (\$500.00). A late registration fee shall not be charged to a farmer who submits a registration that pertains to farming operations."

Section 4. G.S. 143-215.221 reads as rewritten:

"§ 143-215.221. *Regulation of surface water transfers.*

(a) No person, without first securing a certificate from the Commission, may:

- (1) Initiate a transfer of 2,000,000 gallons of water or more per day from one river basin to another.
- (2) Increase the amount of an existing transfer of water from one river basin to another by twenty-five percent (25%) or more above the average daily amount transferred during the year ending July 1, 1993, if the total transfer including the increase is 2,000,000 gallons or more per day.
- (3) Increase an existing transfer of water from one river basin to another above the amount approved by the Commission in a certificate issued under G.S. 162A-7 prior to July 1, 1993.

(b) Notwithstanding the provisions of subsection (a) of this section, a certificate shall not be required to transfer water from one river basin to another up to the full capacity of a facility to transfer water from one basin to another if the facility was existing or under construction on July 1, 1993.

(c) An applicant for a certificate shall petition the Commission for the certificate. The petition shall be in writing and shall include the following:

- (1) A description of the facilities to be used to transfer the water, including the location and capacity of water intakes, pumps, pipelines, and other facilities.
- (2) A description of the proposed uses of the water to be transferred.
- (3) The water conservation measures to be used by the applicant to assure efficient use of the water and avoidance of waste.
- (4) Any other information deemed necessary by the Commission for review of the proposed water transfer.

(d) Upon receipt of the petition, the Commission shall hold a public hearing on the proposed transfer after giving at least 30 days' written notice of the hearing as follows:

- (1) By publishing notice in the North Carolina Register.
- (2) By publishing notice in a newspaper of general circulation in the area of the river basin downstream from the point of withdrawal.
- (3) By giving notice by first-class mail to each of the following:
 - a. A person who has registered under this Part a water withdrawal or transfer from the same river basin where the water for the proposed transfer would be withdrawn.
 - b. A person who secured a certificate under this Part for a water transfer from the same river basin where the water for the proposed transfer would be withdrawn.
 - c. A person holding a National Pollutant Discharge Elimination System (NPDES) wastewater discharge permit exceeding 100,000 gallons per day for a discharge located downstream from the proposed withdrawal point of the proposed transfer.

- d. The board of county commissioners of each county that is located entirely or partially within the river basin that is the source of the proposed transfer.
 - e. The governing body of any public water supply system that withdraws water downstream from the withdrawal point of the proposed transfer.
- (e) The notice of the public hearing shall include a nontechnical description of the applicant's request and a conspicuous statement in bold type as to the effects of the water transfer on the source and receiving river basins. The notice shall further indicate the procedure to be followed by anyone wishing to submit comments on the proposed water transfer.
- (f) In determining whether a certificate may be issued for the transfer, the Commission shall specifically consider each of the following items and state in writing its findings of fact with regard to each item:
- (1) The necessity, reasonableness, and beneficial effects of the amount of surface water proposed to be transferred and its proposed uses.
 - (2) The present and reasonably foreseeable future detrimental effects on the source river basin, including present and future effects on public, industrial, and agricultural water supply needs, wastewater assimilation, water quality, fish and wildlife habitat, hydroelectric power generation, navigation, and recreation. Local water supply plans that affect the source major river basin shall be used to evaluate the projected future municipal water needs in the source major river basin.
 - (2a) The cumulative effect on the source major river basin of any water transfer or consumptive water use that, at the time the Commission considers the application for a certificate is occurring, is authorized under this section, or is projected in any local water supply plan that has been submitted to the Department in accordance with G.S. 143-355(l).
 - (3) The detrimental effects on the receiving river basin, including effects on water quality, wastewater assimilation, fish and wildlife habitat, navigation, recreation, and flooding.
 - (4) Reasonable alternatives to the proposed transfer, including their probable costs, and environmental impacts.
 - (5) If applicable to the proposed project, the applicant's present and proposed use of impoundment storage capacity to store water during high-flow periods for use during low-flow periods and the applicant's right of withdrawal under G.S. 143-215.44 through G.S. 143-215.50.
 - (6) If the water to be withdrawn or transferred is stored in a multipurpose reservoir constructed by the United States Army Corps of Engineers, the purposes and water storage allocations established for the reservoir at the time the reservoir was authorized by the Congress of the United States.
 - (7) Any other facts and circumstances that are reasonably necessary to carry out the purposes of this Part.

(f1) An environmental assessment as defined by G.S. 113A-9(1) shall be prepared for any petition for a certificate under this section. The determination of whether an environmental impact statement shall also be required shall be made in accordance with the provisions of Article 1 of Chapter 113A of the General Statutes. The applicant who petitions the Commission for a certificate under this section shall pay the cost of special studies necessary to comply with Article 1 of Chapter 113A of the General Statutes.

(g) A certificate shall be granted for a water transfer if the applicant establishes and the Commission concludes by a preponderance of the evidence based upon the findings of fact made under subsection (f) of this section that: (i) the benefits of the proposed transfer outweigh the detriments of the proposed transfer, and (ii) the detriments have been or will be mitigated to a reasonable degree. The conditions necessary to ensure that the detriments are and continue to be mitigated to a reasonable degree shall be attached to the certificate in accordance with subsection (h) of this section.

(h) The Commission may grant the certificate in whole or in part, or deny the certificate. The Commission may also grant a certificate with any conditions attached that the Commission believes are necessary to achieve the purposes of this Part. The conditions may include mitigation measures proposed to minimize any detrimental effects of the proposed transfer and measures to protect the availability of water in the source river basin during a drought or other emergency. The certificate shall include a drought management plan that specifies how the transfer shall be managed to protect the source river basin during drought conditions. The certificate shall indicate the maximum amount of water that may be transferred. No person shall transfer an amount of water that exceeds the amount in the certificate.

(i) In cases where an applicant requests approval to increase a transfer that existed on July 1, 1993, the Commission shall have authority to approve or disapprove only the amount of the increase. If the Commission approves the increase, however, the certificate shall be issued for the amount of the existing transfer plus the requested increase. Certificates for transfers approved by the Commission under G.S. 162A-7 shall remain in effect as approved by the Commission and shall have the same effect as a certificate issued under this Part.

(j) In the case of water supply problems caused by drought, a pollution incident, temporary failure of a water plant, or any other temporary condition in which the public health requires a transfer of water, the Secretary of the Department of Environment and Natural Resources may grant approval for a temporary transfer. Prior to approving a temporary transfer, the Secretary of the Department of Environment and Natural Resources shall consult with those parties listed in G.S. 143-215.221(d)(3) that are likely to be affected by the proposed transfer. However, the Secretary of the Department of Environment and Natural Resources shall not be required to satisfy the public notice requirements of this section or make written findings of fact and conclusions in approving a temporary transfer under this subsection. If the Secretary of the Department of Environment and Natural Resources approves a temporary transfer under this subsection,

the Secretary shall specify conditions to protect other water users. A temporary transfer shall not exceed six months in duration, but the approval may be renewed for a period of six months by the Secretary of the Department of Environment and Natural Resources based on demonstrated need as set forth in this subsection.

(k) The substantive restrictions and conditions upon surface water transfers authorized in this section may be imposed pursuant to any federal law that permits the State to certify, restrict, or condition any new or continuing transfers or related activities licensed, relicensed, or otherwise authorized by the federal government.

(l) When any transfer for which a certificate was issued under this section equals eighty percent (80%) of the maximum amount authorized in the certificate, the applicant shall submit to the Department a detailed plan that specifies how the applicant intends to address future foreseeable water needs. If the applicant is required to have a local water supply plan, then this plan shall be an amendment to the local water supply plan required by G.S. 143-355(l). When the transfer equals ninety percent (90%) of the maximum amount authorized in the certificate, the applicant shall begin implementation of the plan submitted to the Department.

(m) It is the public policy of the State to maintain, protect, and enhance water quality within North Carolina. Further, it is the public policy of the State that the cumulative impact of transfers from a source river basin shall not result in a violation of the antidegradation policy set out in 40 Code of Federal Regulations § 131.12 (1 July 1997 Edition) and the statewide antidegradation policy adopted pursuant thereto."

Section 5. G.S. 143-355(l) reads as rewritten:

"(l) Each unit of local government that provides public water ~~services~~ service or that plans to provide public water service shall, either individually or together with other units of local government, prepare a local water supply plan and submit it to the Department. The Department shall provide technical assistance with the preparation of plans to units of local government upon request and to the extent that the Department has resources available to provide assistance. At a minimum, local units of government shall include in local water supply plans all information that is readily available to them. ~~However this subsection shall be construed to require the preparation of local water supply plans only to the extent that technical assistance is made available to units of local government from the Department.~~ Plans shall include present and projected population, industrial development, ~~and~~ water use within the service area, present and future water supplies, an estimate of the technical assistance that may be needed at the local level to address projected water needs, and any other related information as the Department may require in the preparation of a State water supply plan. Local plans shall be revised to reflect changes in relevant data and projections at least once each five years unless the Department requests more frequent revisions. The revised plan shall include the current and anticipated reliance by the local government unit on surface water transfers as defined by G.S. 143-215.22G. Local plans and revised plans shall be submitted to the Department once they have been approved by the unit(s) of local government."

Section 6. Article 1 of Chapter 113A of the General Statutes is amended by adding a new section to read:

"§ 113A-8.1. *Surface water transfers.*

An environmental assessment shall be prepared for any transfer for which a petition is filed in accordance with G.S. 143-215.22I. The determination of whether an environmental impact statement is needed with regard to the proposed transfer shall be made in accordance with the provisions of this Article."

Section 7. By 1 January 1999, each unit of local government that provides public water service or that plans to provide public water service shall, either individually or together with other units of local government, prepare a local water supply plan and submit it to the Department in compliance with G.S. 143-355(l). By 1 January 2000, the Department of Environment and Natural Resources shall develop a State water supply plan in compliance with G.S. 143-355(m). The Department shall identify in the plan any area in the State that appears to face existing or future water shortages, conflicts among water users, or depletion of water resources and shall review the plan at least every five years thereafter to determine whether any other areas are facing these problems within a 10-year period from the date of review.

Section 8. Section 3 of this act becomes effective 1 March 2000. Any person who is required to register a water withdrawal or transfer as a result of the amendments to G.S. 143-215.22H made by Section 3 of this act shall provide the information required by G.S. 143-215.22H(a) on the basis of water withdrawn or transferred during the 1999 calendar year. All other sections of this act become effective 1 October 1998 and apply to any application for a certificate submitted pursuant to G.S. 143-215.22I, as amended by Section 4 of this act, on or after that date.

In the General Assembly read three times and ratified this the 23rd day of September, 1998.

Became law upon approval of the Governor at 10:02 a.m. on the 2nd day of October, 1998.

H.B. 1304

SESSION LAW 1998-169

AN ACT TO REFORM THE BOARD OF TRANSPORTATION BY ALTERING ITS GOVERNANCE STRUCTURE, AUTHORIZING A NEW ETHICS POLICY, REQUIRING DISCLOSURE OF POLITICAL CONTRIBUTIONS BY BOARD MEMBERS, INCREASING PUBLIC PARTICIPATION IN ITS DECISIONS, AND CHANGING THE PENALTIES FOR MISUSE OF A DOT BOARD POSITION.

The General Assembly of North Carolina enacts:

Section 1 G.S. 143B-350 is amended by adding the following new subsections:

"(i) Disclosure of Contributions. -- Any person serving on the Board of Transportation or as Secretary of Transportation on December 1, 1998, shall disclose on that date any contributions the person or the person's immediate family made to the political campaign of the appointing Governor

in the two years preceding December 1, 1998. A person appointed to the Board of Transportation and a person appointed as Secretary of Transportation after December 1, 1998, shall disclose at the time the appointment of the person is officially made public any contributions the person or the person's immediate family made to the political campaign of the appointing Governor in the two years preceding the date of appointment. The term 'immediate family', as used in this subsection, means a person's spouse, children, parents, brothers, and sisters. Disclosure forms shall be filed with the Governor or the Governor's designee and in a manner as prescribed by the Governor. Disclosure forms shall not be a public record under the provisions of Chapter 132 of the General Statutes until such time as the appointment of the person filing the statement is officially made public.

(j) Disclosure of Campaign Fund-Raising. -- A person appointed to the Board of Transportation on or after January 1, 2001, and a person appointed as Secretary of Transportation on or after January 1, 2001, shall disclose at the time the appointment of the person is officially made public any contributions the person personally acquired in the two years prior to appointment for: any political campaign for a statewide or State legislative elected office in North Carolina; any political party executive committee or political committee acting on behalf of a candidate for statewide or State legislative office. Disclosure forms shall be filed with the Governor or the Governor's designee and in a manner as prescribed by the Governor. Disclosure forms shall not be a public record under the provisions of Chapter 132 of the General Statutes until such time as the appointment of the person filing the statement is officially made public.

(k) Ethics Policy. -- The Board shall adopt by December 1, 1998, a code of ethics applicable to members of the Board, including the Secretary. Any code of ethics adopted by the Board shall be supplemental to any other code of ethics that may be applicable to members of the Board or to the Secretary. A code of ethics adopted pursuant to this subsection shall:

- (1) Include a prohibition against a member taking action as a Board member when a conflict of interest, or the appearance of a conflict of interest, exists. The ethics policy adopted pursuant to this subsection shall specify that a conflict of interest exists when the use of the Board member's position, or any official action taken by the Board member, would result in financial benefit, direct or indirect, to the Board member, a member of the Board member's immediate family, or an individual with whom, or business with which, the Board member is associated. The ethics policy adopted pursuant to this subsection shall specify that an appearance of a conflict of interest exists when a reasonable person would conclude from the circumstances that the Board member's ability to protect the public interest, or perform public duties, would be compromised by personal interest, even in the absence of an actual conflict of interest. The performance of usual and customary duties associated with the public position or the advancement of public policy goals or constituent services, without compensation, shall not constitute the use of the Board member's position for

financial benefit. The conflict of interest provision of the ethics policy adopted pursuant to this subsection shall not apply to financial or other benefits derived by a Board member that the Board member would enjoy to an extent no greater than that which other citizens of the State would or could enjoy.

- (2) Require the filing of a statement of economic interest. The statement of economic interest shall include a listing of the appointee's legal, equitable, or beneficial interest in real estate holdings in the State, and a statement of the appointee's financial interest in any business related to the State's transportation system. The statement of economic interest shall be filed with the Governor, or the Governor's designee, and in a manner as prescribed by the Governor.
- (3) Require the filing of a statement of association. The statement of association shall include a statement of the appointee's membership or other affiliation with, including offices held, in societies, organizations, or advocacy groups pertaining to the State's transportation system. The statement of association shall be filed with the Governor, or the Governor's designee, and in a manner as prescribed by the Governor.

Board members and the Secretary serving on December 1, 1998, shall file the statement of economic interest and statement of association on that date. Board members and the Secretary appointed after December 1, 1998, shall file the statement of economic interest and statement of association at the time the appointment of the person is officially made public. The statement of economic interest and the statement of association shall not be a public record under the provisions of Chapter 132 of the General Statutes until the appointment of the person filing the statement is officially made public.

(l) Additional Requirements for Disclosure Statements. -- All disclosure statements required under subsections (i), (j), and (k) of this section must be sworn written statements.

(m) Ethics and Board Duties Education. -- The Board shall institute by January 1, 1999, and conduct annually an education program on ethics and on the duties and responsibilities of Board members. The training session shall be comprehensive in nature and shall include input from the Institute of Government, the North Carolina Board of Ethics, the Attorney General's Office, the University of North Carolina Highway Safety Research Center, and senior career employees of the various divisions of the Department. This program shall include an initial orientation for new members of the Board and continuing education programs for Board members at least once each year."

Section 2. Part 2 of Article 8 of Chapter 143B of the General Statutes, as amended by Section 1 of this act, reads as rewritten:

"Part 2. Board of ~~Transportation -- Secondary~~
~~Roads Council.~~ Transportation.

"§ 143B-350. Board of Transportation -- organization; powers and duties, etc.

(a) ~~There is hereby created a Board of Transportation. The Board shall carry out its duties consistent with the needs of the State as a whole and it~~

~~shall not sacrifice the general statewide interest to the purely local desires of any particular area. The Board may, from time to time, provide that one or more of its members or representatives shall hear any person or persons concerning transportation.~~

~~(b) The Board of Transportation shall have two ex officio members. The Secretary of Transportation shall be an ex officio member of the Board of Transportation and shall be the chairman of the Board of Transportation. The chairman of the North Carolina Rail Council shall be an ex officio member of the Board of Transportation.~~

~~(c) The Board of Transportation shall have 20 members appointed by the Governor. One member shall be appointed from each of the 14 transportation engineering divisions and six members shall be appointed from the State at large. One at-large member shall be a registered voter of a political party other than the political party of the Governor. At least one at-large member shall possess a broad knowledge of public transportation matters. No more than two members provided for in this subsection shall reside in the same engineering division while serving in office. The initial members shall serve terms beginning July 1, 1977, and ending January 14, 1981, or until their successors are appointed and qualified. The succeeding terms of office shall be for a period of four years beginning January 15, 1981, and each four years thereafter. The Governor shall have the authority to remove for cause sufficient to himself, any member appointed by the Governor.~~

~~(d) The Board of Transportation shall have four members appointed by the General Assembly. Two of these members shall be appointed upon the recommendation of the Speaker of the House of Representatives, and two shall be appointed upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121. The initial members appointed by the General Assembly shall serve for terms expiring June 30, 1983. Thereafter, their successors shall serve for two-year terms beginning July 1 of odd-numbered years. Vacancies in appointments made by the General Assembly shall be filled in accordance with G.S. 120-122.~~

(a) Board of Transportation. -- There is hereby created a Board of Transportation. The Board shall carry out its duties consistent with the needs of the State as a whole. The diversity and size of the State require that regional differences be considered by Board members as they develop transportation policy and projects for the benefit of the citizens of the State.

(b) Membership of the Board. --

(1) Number, appointment. -- The Board of Transportation shall have 19 voting members. Fourteen of the members shall be division members appointed by the Governor. Five shall be at-large members appointed by the Governor. At least three members of the Board shall be registered voters of a political party other than the political party of the Governor. The Secretary of Transportation shall serve as an ex officio nonvoting member of the Board. No more than two members of the Board may reside in the same highway division.

(2) Division members. -- One member shall be appointed from and be a resident of each of the 14 highway divisions. The Governor, in

selecting division members, shall consider for appointment persons suggested by the Transportation Advisory Committees located within each division. Division members shall direct their primary effort to developing transportation policy and addressing transportation problems in the region they represent. Division members shall regularly consult with and consider the views of local government units and Transportation Advisory Committees in the region they represent.

- (3) At-large members. -- Five members shall be appointed by the Governor from the State at large. At-large members appointed pursuant to this subdivision shall develop transportation policy and address transportation problems with a statewide perspective. At-large members appointed under this subdivision shall possess the following qualifications:

- a. One at-large member shall be a person with expertise in environmental issues affecting the State;
- b. One at-large member shall be a person familiar with the State ports and aviation issues;
- c. One at-large member shall be a person residing in a rural area of the State with broad knowledge of and experience in transportation issues affecting rural areas;
- d. One at-large member shall be a person residing in an urban area with broad knowledge of and expertise in mass transit;
- e. One at-large member shall be a person with broad knowledge of and expertise in government-related finance and accounting.

(c) Staggered Terms. -- The terms of all Board members serving on the Board prior to January 15, 2001, shall expire on January 14, 2001. A new board of 19 members shall be appointed with terms beginning on January 15, 2001. The Board shall serve the following terms: division members representing divisions 1, 3, 5, 7, 9, 11, and 13 and the three at-large members filling the positions designated in sub-subdivisions (b)(3)a., b., and e. of this section shall serve four-year terms beginning on January 15, 2001, and four-year terms thereafter; and division members representing divisions 2, 4, 6, 8, 10, 12, and 14 and the two at-large members filling the positions designated in sub-subdivisions (b)(3)c. and d. of this section shall serve two-year terms beginning January 15, 2001, and four-year terms thereafter.

(d) Holdover Terms; Vacancies; Removal. -- Members shall continue to serve until their successors are appointed. The Governor may appoint a member to serve out the unexpired term of any Board member. The Governor may remove any member of the Board for any cause the Governor finds sufficient. The Governor shall remove any member of the Board upon conviction of a felony, conviction of any offense involving a violation of the Board member's official duties, or for a violation of the provisions of subsections (i), (j), and (k) of this section or any other code of ethics applicable to members of the Board as determined by the Governor or the Governor's designee.

(e) Organization and Meetings of the Board. -- Within 60 days after January 15, 2001, and thereafter within 60 days following the beginning of

the regular term of the Governor, the Governor or his designee shall call the Board into session. The Board shall select a chair and vice-chair from among its membership for two-year terms. The Board may select a chair or vice-chair for one additional two-year term. The Board of Transportation shall meet once in each 60 days at such regular meeting times as the Board may by rule provide and at any place in the State as the Board may provide. The Board may hold special meetings at any time at the call of the chairman or any three members. The Board shall have the power to adopt and enforce rules and regulations for the government of its business and proceedings. The Board shall keep minutes of its meetings, which shall at all times be open to public inspection. The majority of the Board shall constitute a quorum for the transaction of business. Board members shall receive per diem and necessary travel and subsistence expenses in accordance with G.S. 138-5 and G.S. 138-6, as appropriate.

(f) Duties of the Board. -- The Board of Transportation shall have duties and powers:

- (1) To formulate policies and priorities for all modes of transportation under the Department of Transportation;
- (2) To advise the Secretary on matters to achieve the maximum public benefit in the performance of the functions assigned to the Department;
- (3) To ascertain the transportation needs and the alternative means to provide for these needs through an integrated system of transportation taking into consideration the social, economic and environmental impacts of the various ~~alternatives.~~ alternatives;
- (4) To approve a schedule of all major transportation improvement projects and their anticipated cost for a period of seven years into the future. This schedule is designated the Transportation Improvement Program; it must be published and copies must be available for distribution. The document that contains the Transportation Improvement Program, or a separate document that is published at the same time as the Transportation Improvement Program, must include the anticipated funding sources for the improvement projects included in the Program, a list of any changes made from the previous year's Program, and the reasons for the changes;
- (5) To consider and advise the Secretary of Transportation upon any other transportation matter that the Secretary may refer to it;
- (6) To assist the Secretary of Transportation in the performance of his duties in the development of programs and approve priorities for programs within the Department;
- (7) To allocate all highway construction and maintenance funds appropriated by the General Assembly as well as federal-aid funds which may be available;
- (8) To approve all highway construction programs;
- (9) To approve all highway construction projects and construction plans for the construction of projects;
- (10) To review all statewide maintenance functions;
- (11) To award all highway construction contracts;

- (12) To authorize the acquisition of rights-of-way for highway improvement projects, including the authorization for acquisition of property by eminent domain;
- (13) To promulgate rules, regulations, and ordinances concerning all transportation functions assigned to the Department.

(f) Municipal Participation. -- The ability of a municipality to pay in part or whole for any transportation improvement project shall not be a factor considered by the Board of Transportation in its development and approval of a schedule of major State highway system improvement projects to be undertaken by the Department under G.S. 143B-350(f)(4).

(g) Delegation of Board Duties. -- The Board of Transportation may, in its discretion, delegate to the Secretary of Transportation the authority:

- (1) To approve all highway construction projects and construction plans for the construction of projects;
- (2) To award all highway construction contracts;
- (3) To promulgate rules, regulations, and ordinances concerning all transportation functions assigned to the Department.

The Secretary may, in turn, subdelegate these duties and powers.

(h) Consultation of Board Members. -- Each member of the Board of Transportation who is appointed to represent a transportation engineering division or who resides in a division shall be consulted before the Board makes a decision affecting that division.

(i) Disclosure of Contributions. -- Any person serving on the Board of Transportation or as Secretary of Transportation on December 1, 1998, shall disclose on that date any contributions the person or the person's immediate family made to the political campaign of the appointing Governor in the two years preceding December 1, 1998. A person appointed to the Board of Transportation and a person appointed as Secretary of Transportation after December 1, 1998, shall disclose at the time the appointment of the person is officially made public any contributions the person or the person's immediate family made to the political campaign of the appointing Governor in the two years preceding the date of appointment. The term 'immediate family', as used in this subsection, means a person's spouse, children, parents, brothers, and sisters. Disclosure forms shall be filed with the Governor or the Governor's designee and in a manner as prescribed by the Governor. Disclosure forms shall not be a public record under the provisions of Chapter 132 of the General Statutes until such time as the appointment of the person filing the statement is officially made public.

(j) Disclosure of Campaign Fund-Raising. -- A person appointed to the Board of Transportation on or after January 1, 2001, and a person appointed as Secretary of Transportation on or after January 1, 2001, shall disclose at the time the appointment of the person is officially made public any contributions the person personally acquired in the two years prior to appointment for: any political campaign for a statewide or legislative elected office in North Carolina; any political party executive committee or political committee acting on behalf of a candidate for statewide or legislative office. Disclosure forms shall be filed with the Governor or the Governor's designee and in a manner as prescribed by the Governor. Disclosure forms

shall not be a public record under the provisions of Chapter 132 of the General Statutes until such time as the appointment of the person filing the statement is officially made public.

(k) Ethics Policy. -- The Board shall adopt by December 1, 1998, a code of ethics applicable to members of the Board, including the Secretary. Any code of ethics adopted by the Board shall be supplemental to any other code of ethics that may be applicable to members of the Board or to the Secretary. A code of ethics adopted pursuant to this subsection shall:

- (1) Include a prohibition against a member taking action as a Board member when a conflict of interest, or the appearance of a conflict of interest, exists. The ethics policy adopted pursuant to this subsection shall specify that a conflict of interest exists when the use of the Board member's position, or any official action taken by the Board member, would result in financial benefit, direct or indirect, to the Board member, a member of the Board member's immediate family, or an individual with whom, or business with which, the Board member is associated. The ethics policy adopted pursuant to this subsection shall specify that an appearance of a conflict of interest exists when a reasonable person would conclude from the circumstances that the Board member's ability to protect the public interest, or perform public duties, would be compromised by personal interest, even in the absence of an actual conflict of interest. The performance of usual and customary duties associated with the public position or the advancement of public policy goals or constituent services, without compensation, shall not constitute the use of the Board member's position for financial benefit. The conflict of interest provision of the ethics policy adopted pursuant to this subsection shall not apply to financial or other benefits derived by a Board member that the Board member would enjoy to an extent no greater than that which other citizens of the State would or could enjoy.
- (2) Require the filing of a statement of economic interest. The statement of economic interest shall include a listing of the appointee's legal, equitable, or beneficial interest in real estate holdings in the State, and a statement of the appointee's financial interest in any business related to the State's transportation system. The statement of economic interest shall be filed with the Governor, or the Governor's designee, and in a manner as prescribed by the Governor.
- (3) Require the filing of a statement of association. The statement of association shall include a statement of the appointee's membership or other affiliation with, including offices held, in societies, organizations, or advocacy groups pertaining to the State's transportation system. The statement of association shall be filed with the Governor, or the Governor's designee, and in a manner as prescribed by the Governor.

Board members and the Secretary serving on December 1, 1998, shall file the statement of economic interest and statement of association on that

date. Board members and the Secretary appointed after December 1, 1998, shall file the statement of economic interest and statement of association at the time the appointment of the person is officially made public. The statement of economic interest and the statement of association shall not be a public record under the provisions of Chapter 132 of the General Statutes until the appointment of the person filing the statement is officially made public.

(l) Additional Requirements for Disclosure Statements. -- All disclosure statements required under subsections (i), (j), and (k) of this section must be sworn written statements.

(m) Ethics and Board Duties Education. -- The Board shall institute by January 1, 1999, and conduct annually an education program on ethics and on the duties and responsibilities of Board members. The training session shall be comprehensive in nature and shall include input from the Institute of Government, the North Carolina Board of Ethics, the Attorney General's Office, the University of North Carolina Highway Safety Research Center, and senior career employees of the various divisions of the Department. This program shall include an initial orientation for new members of the Board and continuing education programs for Board members at least once each year.

(n) Review of Appointments by the Joint Legislative Transportation Oversight Committee. -- The Governor shall submit the names of all proposed Board of Transportation appointees, along with the disclosure statements required under subsections (i), (j), and (k) of this section, to the Joint Legislative Transportation Oversight Committee prior to Board members' taking office. The Committee shall have 30 days to review and submit comments to the Governor on the proposed appointees before they take office. The Governor shall consider the views expressed by the Committee concerning the appointees to the Board. If the Committee does not review or submit comments to the Governor on the proposed Board appointees within the 30 days, the Governor may proceed to appoint the proposed members to the Board."

Section 3. Article 1 of Chapter 136 is amended by adding a new section to read:

"§ 136-11.1. Local consultation on transportation projects.

Prior to any action of the Board on a transportation project, the Department shall inform all municipalities and counties affected by a planned transportation project and request each affected municipality or county to submit within 45 days a written resolution expressing their views on the project. A municipality or county may designate a Transportation Advisory Committee to submit its response to the Department's request for a resolution. Upon receipt of a written resolution from all affected municipalities and counties or their designees, or the expiration of the 45-day period, whichever occurs first, the Board may take action. The Department and the Board shall consider, but shall not be bound by, the views of the affected municipalities and counties on each transportation project. The failure of a county or municipality to express its views within the time provided shall not prevent the Department or the Board from taking action. The Department shall not be required to send notice under this

section if it has already received a written resolution from the affected county or municipality on the planned transportation project. 'Action of the Board', as used in this section, means approval by the Board of: the Transportation Improvement Program and amendments to the Transportation Improvement Program; the Secondary Roads Paving Program and amendments to the Secondary Roads Paving Program; and individual applications for access and public service road projects, contingency projects, small urban projects, and spot safety projects that exceed one hundred fifty thousand dollars (\$150,000). The 45-day notification provision may be waived upon a finding by the Secretary of Transportation that emergency action is required. Such findings must be reported to the Joint Legislative Transportation Oversight Committee."

Section 4. G.S. 136-14 reads as rewritten:

"§ 136-14. Members not eligible for other employment with Department; no sales to Department by employees; members not to sell or trade property with Department; profiting from official ~~position~~, position; misuse of confidential information by Board members.

(a) No Board member of the Board of Transportation shall be eligible to any other employment in connection with the Department of Transportation, and no Department.

(b) No Board member of the Board of Transportation or any salaried employee of the Department of Transportation shall furnish or sell any supplies or materials, directly or indirectly, to the Department of Transportation, nor shall any Department.

(c) No Board member of the Board of Transportation, shall, directly or indirectly, engage in any transaction involving the sale of or trading of real or personal property with the Department of Transportation, or Department.

(d) No Board member shall profit in any manner by reason of his the Board member's official action or his official position, except to receive such salary, fees and allowances as by law provided.

(e) No Board member shall take any official action or use the Board member's official position to profit in any manner the Board member's immediate family, a business with which the Board member or the Board member's immediate family has a business association, or a client of the Board member or the Board member's immediate family with whom the Board member, or the Board member's immediate family, has an existing business relationship for matters before the Board.

(f) No Board member shall attempt to profit from a proposed project of the Department if the profit is greater than that which would be realized by other persons living in the area where the project is located. If the profit under this subsection would be greater for the Board member than other persons living in the area where the project is located not only shall the member abstain from voting on that issue, but once the conflict of interest is apparent, the member shall not discuss the project with any other Board member or other officer or employee of the Department except to state that a conflict of interest exists. Under this subsection a Board member is presumed to profit if the profit would be realized by a Board member's immediate family, a business with which the Board member or the Board member's immediate family has a business association, or a client of the

Board member or the Board member's immediate family with whom the Board member, or the Board member's immediate family, has an existing business relationship for matters before the Board. Violation of this subsection shall be a Class I felony.

(g) No Board member, in contemplation of official action by the Board member, by the Board, or in reliance on information that was made known to the Board member in the Board member's official capacity and that has not been made public, shall commit any of the following acts:

- (1) Acquire a pecuniary interest in any property, transaction, or enterprise or gain any pecuniary benefit that may be affected by such information or official action; or
- (2) Intentionally aid another to do any of the above acts.
- (h) As used in this section, the following terms mean:
 - (1) 'Board'. -- The Board of Transportation.
 - (2) 'Board member'. -- A member of the Board of Transportation.
 - (3) 'Business association'. -- A director, employee, officer, or partner of a business entity, or owner of more than ten percent (10%) interest in any business entity.
 - (4) 'Department'. -- The Department of Transportation.
 - (5) 'Immediate family'. -- Spouse, children, parents, brothers, and sisters.
 - (6) 'Official action'. -- Actions taken while a Board member related to or in connection with the person's duties as a Board member including, but not limited to, voting on matters before the Board, proposing or objecting to proposals for transportation actions by the Department or the Board, discussing transportation matters with other Board members or Department staff or employees in an effort to further the matter after the conflict of interest has been discovered, or taking actions in the course and scope of the position as a Board member and actions leading to or resulting in profit.
 - (7) 'Profit'. -- Receive monetary or economic gain or benefit, including an increase in value whether or not recognized by sale or trade.

(i) ~~Violation~~ Except as otherwise provided in this section, a violation of this section shall be a Class I ~~H~~ felony which may include a fine of not more than twenty thousand dollars (\$20,000), or three times the value of the ~~transaction~~, transaction, whichever amount is greater."

Section 5. (a) The Board of Transportation, with the assistance of the Secretary and the Department of Transportation, shall study realignment and reorganization of the 14 Transportation Divisions of the State to more closely match the urban and rural regions that have developed in the State over the past 40 years and to improve the efficiency of the operations of the Department. The Board shall give primary consideration to the boundaries of the metropolitan planning regions of the State as it considers realignment of the Transportation Divisions. The Board or its designee shall report its findings to the Joint Legislative Transportation Oversight Committee and the Joint Legislative Commission on Governmental Operations on or before December 31, 1998.

(b) The Board and the Secretary shall report to the Joint Legislative Transportation Oversight Committee and the Joint Legislative Commission on Governmental Operations on any proposed changes to the current Transportation Division and District system prior to implementing any changes.

Section 6. The Board of Transportation, with the assistance of the Secretary and the Department of Transportation, shall develop a plan to establish Rural Transportation Planning Organizations (RPOs) as a counterpart to the existing Metropolitan Planning Organizations (MPOs). The Board or its designee shall report its plan to establish these organizations to the Joint Legislative Transportation Oversight Committee and the Joint Legislative Commission on Governmental Operations on or before December 31, 1998.

Section 7. The Board of Transportation, with the assistance of the Secretary and the Department of Transportation, shall study the backlog of maintenance needs for the State's highways and suggest methods for addressing this issue, including sources of funds. The Board or its designee shall report its findings and recommendations to the Joint Legislative Transportation Oversight Committee and the Joint Legislative Commission on Governmental Operations on or before December 31, 1998.

Section 8. The Board of Transportation, assisted by the Secretary and the Department, shall develop a plan to ensure that Board members have additional appropriate technical assistance to allow them to be fully informed and active participants at each Board meeting. The Board or its designee shall submit a report on its plan to the Joint Legislative Transportation Oversight Committee and the Joint Legislative Commission on Governmental Operations on or before December 1, 1998, and a report on the implementation of the plan on October 1, 1999.

Section 9. Section 1 of this act becomes effective December 1, 1998. Section 2 of this act becomes effective January 1, 2001. Section 3 of this act becomes effective January 1, 1999, and applies to actions taken by the Board of Transportation on or after March 1, 1999. Section 4 of this act becomes effective December 1, 1998, and applies to offenses committed on or after that date. The remainder of this act becomes effective October 1, 1998. Members of the Board of Transportation serving on and before January 14, 2001, shall continue to serve until the date their successors are appointed in accordance with this act.

In the General Assembly read three times and ratified this the 24th day of September, 1998.

Became law upon approval of the Governor at 10:05 a.m. on the 2nd day of October, 1998.

S.B. 1243

SESSION LAW 1998-170

AN ACT TO ADD CLERKS OF COURT TO THE SENTENCING AND
POLICY ADVISORY COMMISSION, THE CRIMINAL JUSTICE
ADVISORY BOARD, AND THE GOVERNOR'S CRIME
COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 164-37 reads as rewritten:

"§ 164-37. *Membership; chairman; meetings; quorum.*

The Commission shall consist of ~~28~~ 29 members as follows:

- (1) The Chief Justice of the North Carolina Supreme Court shall appoint a sitting or former Justice or judge of the General Court of Justice, who shall serve as Chairman of the Commission;
- (2) The Chief Judge of the North Carolina Court of Appeals, or another judge on the Court of Appeals, serving as his designee;
- (3) The Secretary of Correction or his designee;
- (4) The Secretary of Crime Control and Public Safety or his designee;
- (5) The Chairman of the Parole Commission, or his designee;
- (6) The President of the Conference of Superior Court Judges or his designee;
- (7) The President of the District Court Judges Association or his designee;
- (8) The President of the North Carolina Sheriff's Association or his designee;
- (9) The President of the North Carolina Association of Chiefs of Police or his designee;
- (10) One member of the public at large, who is not currently licensed to practice law in North Carolina, to be appointed by the Governor;
- (11) One member to be appointed by the Lieutenant Governor;
- (12) Three members of the House of Representatives, to be appointed by the Speaker of the House;
- (13) Three members of the Senate, to be appointed by the President Pro Tempore of the Senate;
- (14) The President Pro Tempore of the Senate shall appoint the representative of the North Carolina Community Sentencing Association that is recommended by the President of that organization;
- (15) The Speaker of the House of Representatives shall appoint the member of the business community that is recommended by the President of the North Carolina Retail Merchants Association;
- (16) The Chief Justice of the North Carolina Supreme Court shall appoint the criminal defense attorney that is recommended by the President of the North Carolina Academy of Trial Lawyers;
- (17) The President of the Conference of District Attorneys or his designee;
- (18) The Lieutenant Governor shall appoint the member of the North Carolina Victim Assistance Network that is recommended by the President of that organization;
- (19) A rehabilitated former prison inmate, to be appointed by the Chairman of the Commission;
- (20) The President of the North Carolina Association of County Commissioners or his designee;

- (21) The Governor shall appoint the member of the academic community, with a background in criminal justice or corrections policy, that is recommended by the President of The University of North Carolina;
- (22) The Attorney General, or a member of his staff, to be appointed by the Attorney General;
- (23) The Governor shall appoint the member of the North Carolina Bar Association that is recommended by the President of that organization.
- (24) A member of the Justice Fellowship Task Force, who is a resident of North Carolina, to be appointed by the Chairman of the Commission.
- (25) The President of the Association of Clerks of Superior Court of North Carolina, or his designee.

The Commission shall have its initial meeting no later than September 1, 1990, at the call of the Chairman. The Commission shall meet a minimum of four regular meetings each year. The Commission may also hold special meetings at the call of the Chairman, or by any four members of the Commission, upon such notice and in such manner as may be fixed by the rules of the Commission. A majority of the members of the Commission shall constitute a quorum."

Section 2. G.S. 143B-273.6 reads as rewritten:

"§ 143B-273.6. *State Criminal Justice Partnership Advisory Board; members; terms; chairperson.*

(a) There is created the State Criminal Justice Partnership Advisory Board. The State Board shall act as an advisory body to the Secretary with regards to this Article. The State Board shall consist of ~~21~~ 22 members as follows:

- (1) A member of the Senate.
- (2) A member of the House of Representatives.
- (3) A judge of the Superior Court.
- (4) A judge of the district court.
- (5) A district attorney.
- (6) A criminal defense attorney.
- (7) A county sheriff.
- (8) A chief of a city police department.
- (9) Two county commissioners, one from a predominantly urban county and one from a predominantly rural county.
- (10) A representative of an existing community-based corrections program.
- (11) A member of the public who has been the victim of a crime.
- (12) A rehabilitated ex-offender.
- (13) A member of the business community.
- (14) Three members of the general public, one of whom is a person recovering from chemical dependency or who is a previous consumer of substance abuse treatment services.
- (15) A victim service provider.
- (16) A member selected from each of the following service areas: mental health, substance abuse, and employment and training.

- (17) A clerk of superior court.
- (b) The membership of the State Board shall be selected as follows:
- (1) The Governor shall appoint the following members: the county sheriff, the chief of a city police department, the member of the public who has been the victim of a crime, a rehabilitated ex-offender, the members selected from each of the service areas.
 - (2) The Lieutenant Governor shall appoint the following members: the member of the business community, one member of the general public who is a person recovering from chemical dependency or who is a previous consumer of substance abuse treatment services, the victim service provider.
 - (3) The Chief Justice of the North Carolina Supreme Court shall appoint the following members: the superior court judge, the district court judge, the district attorney, the clerk of superior court, the criminal defense attorney, the representative of an existing community-based corrections program.
 - (4) The President Pro Tempore of the Senate shall appoint the following members: the member of the Senate, the county commissioner from a predominantly urban county, one member of the general public.
 - (5) The Speaker of the House shall appoint the following members: the member of the House of Representatives, the county commissioner from a predominantly rural county, one member of the general public.

In appointing the members of the State Board, the appointing authorities shall make every effort to ensure fair geographic representation of the State Board membership and that minority persons and women are fairly represented.

(c) The initial members shall serve staggered terms, one-third shall be appointed for a term of one year, one-third shall be appointed for a term of two years, and one-third shall be appointed for a term of three years. The members identified in subdivisions (1) through (7) of subsection (a) of this section shall be appointed initially for a term of one year. The members identified in subdivisions (8) through (13) in subsection (a) of this section shall be appointed initially for a term of two years. The members identified in subdivisions (14) through (16) of subsection (a) of this section shall each be appointed for a term of three years. The additional member identified in subdivision (17) in subsection (a) of this section shall be appointed initially for a term of three years.

At the end of their respective terms of office their successors shall be appointed for terms of three years. A vacancy occurring before the expiration of the term of office shall be filled in the same manner as original appointments for the remainder of the term. Members may be reappointed without limitation.

(d) Each appointing authority shall have the power to remove a member it appointed from the State Board for misfeasance, malfeasance, or nonfeasance.

(e) The members of the State Board shall, within 30 days after the last initial appointment is made, meet and elect one member as chairman and one member as vice-chairman.

(f) The State Board shall meet at least quarterly and may also hold special meetings at the call of the chairman. For purposes of transacting business, a majority of the membership shall constitute a quorum.

(g) Any member who has an interest in a governmental agency or unit or private nonprofit agency which is applying for a State-County Criminal Justice Partnership grant or which has received a grant and which is the subject of an inquiry or vote by a grant oversight committee, shall publicly disclose that interest on the record and shall take no part in discussion or have any vote in regard to any matter directly affecting that particular grant applicant or grantee. 'Interest' in a grant applicant or grantee shall mean a formal and direct connection to the entity, including, but not limited to, employment, partnership, serving as an elected official, board member, director, officer, or trustee, or being an immediate family member of someone who has such a connection to the grant applicant or grantee.

(h) The members of the State Board shall serve without compensation but shall be reimbursed for necessary travel and subsistence expenses."

Section 3. G.S. 143B-478 reads as rewritten:

"§ 143B-478. *Governor's Crime Commission -- creation; composition; terms; meetings, etc.*

(a) There is hereby created the Governor's Crime Commission of the Department of Crime Control and Public Safety. The Commission shall consist of ~~34~~ 35 voting members and six nonvoting members. The composition of the Commission shall be as follows:

(1) The voting members shall be:

- a. The Governor, the Chief Justice of the Supreme Court of North Carolina (or his alternate), the Attorney General, the Director of the Administrative Office of the Courts, the Secretary of the Department of Health and Human Services, the Secretary of the Department of Correction, and the Superintendent of Public Instruction;
- b. A judge of superior court, a judge of district court specializing in juvenile matters, a chief district court judge, a clerk of superior court, and a district attorney;
- c. A defense attorney, three sheriffs (one of whom shall be from a 'high crime area'), three police executives (one of whom shall be from a 'high crime area'), six citizens (two with knowledge of juvenile delinquency and the public school system, two of whom shall be under the age of 21 at the time of their appointment, one representative of a 'private juvenile delinquency program,' and one in the discretion of the Governor), three county commissioners or county officials, and three mayors or municipal officials;
- d. Two members of the North Carolina House of Representatives and two members of the North Carolina Senate.

(2) The nonvoting members shall be the Director of the State Bureau of Investigation, the Secretary of the Department of Crime Control

and Public Safety, the Director of the Division of Youth Services of the Department of Health and Human Services, the Administrator for Juvenile Services of the Administrative Office of the Courts, the Director of the Division of Prisons and the Director of the Division of Adult Probation and Paroles.

(b) The membership of the Commission shall be selected as follows:

- (1) The following members shall serve by virtue of their office: the Governor, the Chief Justice of the Supreme Court, the Attorney General, the Director of the Administrative Office of the Courts, the Secretary of the Department of Health and Human Services, the Secretary of the Department of Correction, the Director of the State Bureau of Investigation, the Secretary of the Department of Crime Control and Public Safety, the Director of the Division of Prisons, the Director of the Division of Adult Probation and Paroles, the Director of the Division of Youth Services, the Administrator for Juvenile Services of the Administrative Office of the Courts, and the Superintendent of Public Instruction. Should the Chief Justice of the Supreme Court choose not to serve, his alternate shall be selected by the Governor from a list submitted by the Chief Justice which list must contain no less than three nominees from the membership of the Supreme Court.
 - (2) The following members shall be appointed by the Governor: the district attorney, the defense attorney, the three sheriffs, the three police executives, the six citizens, the three county commissioners or county officials, the three mayors or municipal officials.
 - (3) The following members shall be appointed by the Governor from a list submitted by the Chief Justice of the Supreme Court, which list shall contain no less than three nominees for each position and which list must be submitted within 30 days after the occurrence of any vacancy in the judicial membership: the judge of superior court, the clerk of superior court, the judge of district court specializing in juvenile matters, and the chief district court judge.
 - (4) The two members of the House of Representatives provided by subdivision (a)(1)d. of this section shall be appointed by the Speaker of the House of Representatives and the two members of the Senate provided by subdivision (a)(1)d. of this section shall be appointed by the President Pro Tempore of the Senate. These members shall perform the advisory review of the State plan for the General Assembly as permitted by section 206 of the Crime Control Act of 1976 (Public Law 94-503).
 - (5) The Governor may serve as chairman, designating a vice-chairman to serve at his pleasure, or he may designate a chairman and vice-chairman both of whom shall serve at his pleasure.
- (c) The initial members of the Commission shall be those appointed pursuant to subsection (b) above, which appointments shall be made by March 1, 1977. The terms of the present members of the Governor's Commission on Law and Order shall expire on February 28, 1977. Effective March 1, 1977, the Governor shall appoint members, other than those serving by virtue of their office, to serve staggered terms; seven shall

be appointed for one-year terms, seven for two-year terms, and seven for three-year terms. At the end of their respective terms of office their successors shall be appointed for terms of three years and until their successors are appointed and qualified. The Commission members from the House and Senate shall serve two-year terms effective March 1, of each odd-numbered year; and they shall not be disqualified from Commission membership because of failure to seek or attain reelection to the General Assembly, but resignation or removal from office as a member of the General Assembly shall constitute resignation or removal from the Commission. Any other Commission member no longer serving in the office from which he qualified for appointment shall be disqualified from membership on the Commission. Any appointment to fill a vacancy on the Commission created by the resignation, dismissal, death, disability, or disqualification of a member shall be for the balance of the unexpired term.

(d) The Governor shall have the power to remove any member from the Commission for misfeasance, malfeasance or nonfeasance.

(e) The Commission shall meet quarterly and at other times at the call of the chairman or upon written request of at least eight of the members. A majority of the voting members shall constitute a quorum for the transaction of business."

Section 4. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 24th day of September, 1998.

Became law upon approval of the Governor at 10:07 a.m. on the 2nd day of October, 1998.

H.B. 1326

SESSION LAW 1998-171

AN ACT TO UPDATE THE REFERENCE TO THE INTERNAL REVENUE CODE USED IN DEFINING AND DETERMINING CERTAIN STATE TAX PROVISIONS, TO EXTEND THE CORPORATE INCOME TAX CARRYFORWARD FOR NET ECONOMIC LOSSES, TO CONFORM TO FEDERAL GIFT TAX TREATMENT OF CONTRIBUTIONS TO QUALIFIED TUITION PROGRAMS, AND TO CORRECT TWO REDLINING ERRORS IN 1998 TAX LEGISLATION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-228.90(b)(1a) reads as rewritten:

"(1a) Code. -- The Internal Revenue Code as enacted as of ~~January 1, 1997,~~ September 1, 1998, including any provisions enacted as of that date which become effective either before or after that date."

Section 2. G.S. 105-134.6(b)(12) is repealed.

Section 3. G.S. 105-134.6(b)(13) reads as rewritten:

"(13) The amount that is distributed to a beneficiary of the Parental Savings Trust Fund of the State Education Assistance Authority ~~if the earnings on the amount are excluded from income under subdivision (12) of this subsection or section 529 of the Code.~~

unless the distribution is a refund of earnings described in section 529 of the Code."

Section 4. G.S. 105-188 is amended by adding a new subsection to read:

"(k) Qualified Tuition Programs. -- The provisions of section 529(c)(2) and (5) of the Code apply to this Article. If a donor elects to take a contribution into account ratably over a five-year period as provided in section 529(c)(2) of the Code, that election applies for the purposes of this Article."

Section 5. Notwithstanding Section 1 of this act, to the extent an amendment to the Internal Revenue Code enacted after January 1, 1997, would increase North Carolina taxable income for a taxpayer's tax year beginning before January 1, 1998, the amendment does not apply to the taxpayer for that tax year.

Section 6. G.S. 105-130.8, as amended by S.L. 1998-98, reads as rewritten:

"§ 105-130.8. Net economic loss.

(a) Net economic losses sustained by a corporation in any or all of the ~~five~~ 15 preceding income years shall be allowed as a deduction to ~~such~~ the corporation subject to the following limitations:

- (1) The purpose in allowing the deduction of a net economic loss of a prior year ~~or years~~ is that of granting to grant some measure of relief to the corporation ~~which that~~ which has incurred economic misfortune or ~~which~~ which is otherwise materially affected by strict adherence to the annual accounting rule in the determination of net income. The deduction ~~herein specified~~ allowed in this section does not authorize the carrying forward of any particular items or category of loss except to the extent that ~~such loss or losses shall result the loss results~~ in the impairment of the net economic situation of the corporation so as to result in a net economic loss as hereinafter defined, defined in this section.
- (2) The net economic loss for any year ~~shall mean~~ means the amount by which allowable deductions for the year other than prior year losses ~~shall~~ exceed income from all sources in the year including any income not taxable under this Part.
- (3) Any net economic loss of ~~a prior year or prior~~ prior years brought forward and claimed as a deduction in any income year may be deducted from net income of the year only to the extent that ~~such carry over the loss carried forward from the prior year or years shall exceed~~ exceeds any income not taxable under this Part received in the same year in which the deduction is claimed, except that in the case of a corporation required to allocate and apportion to North Carolina its net income, ~~as defined in this Part,~~ only such that proportionate part of the net economic loss of a prior year shall be deductible from total income allocable to this State as would be determined by the use of the allocation and apportionment provisions of G.S. 105-130.4 for the year of ~~such~~ the loss.

- (4) A net economic loss carried forward from any year shall first be applied to, or offset by, any income taxable or nontaxable of the next succeeding year before any portion of ~~such~~ the loss may be carried forward to a succeeding ~~year- year~~, except that a loss that is more than five years old may offset no more than fifteen percent (15%) of any taxable income for a taxable year before the remaining portion may be carried forward to a succeeding year.
- (5) For purposes of this section, any income item deductible in determining State net income under the provisions of G.S. 105-130.5 and any nonbusiness income not allocable to this State under the provisions of G.S. 105-130.4 shall be considered as income not taxable under this Part.
- (6) No loss shall either directly or indirectly be carried forward more than ~~five~~ 15 years.

(b) A corporation claiming a deduction for a loss for the current year or carried forward from a prior year must maintain and make available for inspection by the Secretary all records necessary to determine and verify the amount of the deduction. The Secretary or the taxpayer may redetermine an item originating in a taxable year that is closed under the statute of limitations for the purpose of determining the amount of net economic loss that can be carried forward to a taxable year that remains open under the statute of limitations."

Section 7. G.S. 105-130.5(b)(4) reads as rewritten:

"(4) Losses in the nature of net economic losses sustained by the corporation in any or all of the ~~five~~ 15 preceding years pursuant to the provisions of G.S. 105-130.8. ~~Provided, a~~ A corporation required to allocate and apportion its net income under the provisions of G.S. 105-130.4 shall deduct its allocable net economic loss only from total income allocable to this State pursuant to the provisions of G.S. 105-130.8."

Section 8. Effective for taxable years beginning on or after January 1, 2002, G.S. 105-130.8(a)(4), as amended by this act, reads as rewritten:

"(4) A net economic loss carried forward from any year shall first be applied to, or offset by, any income taxable or nontaxable of the next succeeding year before any portion of the loss may be carried forward to a succeeding year, ~~except that a loss that is more than five years old may offset no more than fifteen percent (15%) of any taxable income for a taxable years before the remaining portion may be carried forward to a succeeding year."~~

Section 9. G.S. 105-467(5), as amended by S.L. 1998-98, reads as rewritten:

"(5) The sales price of food that is not otherwise exempt from tax pursuant to G.S. 105-164.13 but would be exempt from the State sales and use tax pursuant to G.S. 105-164.13 if it were ~~issued~~ purchased under the Food Stamp Program, 7 U.S.C. § 51."

Section 10(a). Section 9 of Senate Bill 1230, 1997 General Assembly, is repealed.

Section 10(b). G.S. 105-164.13(11)a., as amended by Section 14 of S.L. 1998-98, reads as rewritten:

"a. Motor fuel, as defined in G.S. 105-449.60, except motor fuel for which a refund of the per gallon excise tax is allowed under G.S. 105-449.105A or G.S. 105-449.107."

Section 11(a). Sections 6 and 7 of this act are effective for taxable years beginning on or after January 1, 1999, and apply to losses incurred for taxable years beginning on or after January 1, 1993. Section 8 of this act becomes effective for taxable years beginning on or after January 1, 2002.

Section 11(b). Section 4 of this act becomes effective for taxable years beginning on or after January 1, 1998. The remainder of this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 24th day of September, 1998.

Became law upon approval of the Governor at 10:10 a.m. on the 2nd day of October, 1998.

H.B. 1260

SESSION LAW 1998-172

AN ACT TO RESTORE THE AUTHORITY OF LOCAL GOVERNMENTS TO ADOPT FLOODPLAIN MANAGEMENT ORDINANCES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143-138(e) reads as rewritten:

"(e) Effect upon Local Codes. -- The North Carolina State Building Code shall apply throughout the State, from the time of its adoption. However, any political subdivision of the State may adopt a fire prevention code and floodplain management regulations within its jurisdiction. The territorial jurisdiction of any municipality or county for this purpose, unless otherwise specified by the General Assembly, shall be as follows: Municipal jurisdiction shall include all areas within the corporate limits of the municipality and extraterritorial jurisdiction areas established as provided in G.S. 160A-360 or a local act; county jurisdiction shall include all other areas of the county. No such code or regulations, other than floodplain management regulations and those permitted by G.S. 160A-436, shall be effective until they have been officially approved by the Building Code Council as providing adequate minimum standards to preserve and protect health and safety, in accordance with the provisions of subsection (c) above. Local floodplain regulations may regulate all types and uses of buildings or structures located in flood hazard areas identified by local, State, and federal agencies, and include provisions governing substantial improvements, substantial damage, cumulative substantial improvements, lowest floor elevation, protection of mechanical and electrical systems, foundation construction, anchorage, acceptable flood resistant materials, and other measures the political subdivision deems necessary considering the characteristics of its flood hazards and vulnerability. In the absence of approval by the Building Code Council, or in the event that approval is withdrawn, local fire prevention codes and regulations shall have no force and effect. Provided any local regulations approved by the local governing

body which are found by the Council to be more stringent than the adopted statewide fire prevention code and which are found to regulate only activities and conditions in buildings, structures, and premises that pose dangers of fire, explosion or related hazards, and are not matters in conflict with the State Building Code, shall be approved. Local governments may enforce the fire prevention code of the State Building Code using civil remedies authorized under G.S. 143-139, 153A-123, and 160A-175. If the Commissioner of Insurance or other State official with responsibility for enforcement of the Code institutes a civil action pursuant to G.S. 143-139, a local government may not institute a civil action under G.S. 143-139, 153A-123, or 160A-175 based upon the same violation. Appeals from the assessment or imposition of such civil remedies shall be as provided in G.S. 160A-434."

Section 2. Local floodplain management ordinances adopted as of the effective date of Section 5 of Session Laws 1997-26 continue in effect until repealed.

Section 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 23rd day of September, 1998.

Became law upon approval of the Governor at 10:15 a.m. on the 2nd day of October, 1998.

S.B. 672

SESSION LAW 1998-173

AN ACT TO ALLOW THE CITY OF CHARLOTTE TO CONTRACT WITH PRIVATE PARTIES FOR THE DEVELOPMENT, CONSTRUCTION, AND OCCUPANCY OF CHARLOTTE-DOUGLAS INTERNATIONAL AIRPORT SPECIAL USER PROJECTS WITHOUT COMPLYING WITH ARTICLE 8 OF CHAPTER 143 OF THE GENERAL STATUTES.

The General Assembly of North Carolina enacts:

Section 1. For purposes of this act, "special user projects" are Charlotte-Douglas International Airport projects that are undertaken for the use and benefit of one or more private entities who will lease the facilities from the City of Charlotte upon terms and conditions that will make the private entities solely responsible for the repayment of all notes, bonds, debts, or other costs incurred in the financing, acquisition, development, or construction of the project.

A special user project shall include all of the following:

- a. The acquisition of equipment, the development of land belonging to the City of Charlotte, and the construction of buildings or other structures belonging to the City of Charlotte on land belonging to the City of Charlotte.
- b. The issuance of the City of Charlotte's special facility revenue bonds or other debt instruments, as authorized in Article 5 of Chapter 159 of the General Statutes, in an amount not less than four million dollars (\$4,000,000) by the Local Government Commission, the proceeds of which shall be used to pay the costs

of the special user project and which bonds or other debt instruments shall be repayable solely from the rents, fees, charges, payments, or other revenues payable to the City of Charlotte by the special user or from the funds, collateral, and undertakings of private parties that are either assigned or pledged by those parties.

- c. The use of the property acquired, developed, or constructed shall be limited to airline, aircraft, aviation support, air passenger, aircraft maintenance and repair, and other airport related purposes, but may include appurtenances and incidental facilities such as driveways, sidewalks, parking facilities, utilities, warehouses, loading facilities, administrative and other office facilities, and other improvements necessary or convenient for the operation of these facilities.

Notwithstanding any other provision of law, the City of Charlotte may agree that all contracts relating to the acquisition, design, construction, installation, or equipping of the special user project shall be solicited, negotiated, awarded, and executed by the private parties for which the City of Charlotte is financing the special user project or any agents of the private parties subject only to approval by the City of Charlotte as the City of Charlotte may require. The City of Charlotte may, out of the proceeds of bonds or other debt instruments, make advances to or reimburse the private parties or their agents for all or a portion of the costs incurred in connection with the contracts. For all contracts related to special user projects, the City of Charlotte shall be exempt from the requirements of Article 8 of Chapter 143 of the General Statutes.

Section 2. This act is effective when it becomes law and expires on January 1, 2003. All contracts executed under the authority of this act and any bonds or other debt instruments issued pursuant to this act prior to the expiration date of this act shall remain effective until the contracts are completed or the bonds or other debt instruments are retired.

In the General Assembly read three times and ratified this the 5th day of October, 1998.

Became law on the date it was ratified.

S.B. 1360

SESSION LAW 1998-174

AN ACT TO REVISE THE UNION COUNTY BOARD OF EQUALIZATION AND REVIEW.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-322 reads as rewritten:

"§ 105-322. *County board of equalization and review.*

(a) ~~Personnel.~~ Board Composed of Commissioners if Special Board Not Appointed. -- Except as otherwise provided herein, If the board of county commissioners does not appoint a special board of equalization and review as provided in this section or if the board of commissioners rescinds the resolution establishing a special board of equalization and review pursuant to this section, then the board of equalization and review of each

the county shall be composed of the members of the board of county commissioners.

(a) Appointment of Special Board; Quorum. -- Upon the adoption of a resolution so providing, the board of commissioners is authorized to appoint a special board of equalization and review to carry out the duties imposed under this section. The resolution shall provide for the membership, qualifications, terms of office and the filling of vacancies on the board. The special board shall be composed of five members, except that the board of commissioners may appoint up to four additional members to serve solely during a reappraisal year. Each year The the board of commissioners shall also designate the chairman a chair of the special board, board from the membership of the board, and the special board shall elect a vice-chair from its membership. To be eligible for appointment to the special board, a person must have resided in Union County for a period of at least one year immediately preceding the appointment and must have such other qualifications as are satisfactory to the board of commissioners. Members of the special board shall serve a term of three years. Vacancies shall be filled by the board of commissioners. A successor appointed to fill a vacancy shall serve for the remainder of the term. Members of the special board shall serve at the pleasure of the board of commissioners. The resolution may also authorize a taxpayer to appeal a decision of the special board with respect to the listing or appraisal of his property or the property of others to the board of county commissioners. The resolution establishing the special board of equalization and review shall be adopted not later than the first Monday in March of the year for which it is to be effective and shall continue in effect until revised or rescinded. It shall be entered in the minutes of the meeting of the board of commissioners and a copy thereof shall be forwarded to the Department of Revenue within 15 days after its adoption.

~~Nothing in this subsection (a) shall be construed as repealing any law creating a special board of equalization and review or creating any board charged with the duties of a board of equalization and review in any county.~~

Except as provided in subsection (h) of this section, a majority of the members of the board of equalization and review shall constitute a quorum for the purpose of transacting any business. A decision of the board shall be made by a majority of the members present.

(b) Compensation. -- The board of county commissioners shall fix the compensation and allowances to be paid members of the board of equalization and review for their services and expenses.

(c) Oath. -- Each member of the board of equalization and review shall take the oath required by Article VI, § 7 of the North Carolina Constitution with the following phrase added to it: "that I will not allow my actions as a member of the board of equalization and review to be influenced by personal or political friendships or obligations,". The oath must be filed with the clerk of the board of county commissioners.

(d) Clerk and Minutes. -- The assessor or a person designated by the assessor shall serve as clerk to the board of equalization and review, shall be present at all meetings, shall maintain accurate minutes of the actions of the board, and shall give to the board such information as he may have or can

obtain with respect to the listing and valuation of taxable property in the county.

(e) Time of Meeting. -- ~~Each~~ Except as otherwise provided in this section, each year the board of equalization and review shall hold its first meeting not earlier than the first Monday in April and not later than the first Monday in May. In years in which a county does not conduct a real property revaluation, the board shall complete its duties on or before the third Monday following its first meeting unless, in its opinion, a longer period of time is necessary or expedient to a proper execution of its responsibilities. ~~In no event shall the board~~ In performing its duties pursuant to subdivisions (g)(1) and (g)(2) of this section, the board shall not sit later than July 1 except to hear and determine requests made under the provisions of subdivision (g)(2), below, when such requests are made within the time prescribed by law. In the year in which a county conducts a real property revaluation, the board shall complete its duties pursuant to subdivisions (g)(1) and (g)(2) of this section on or before December 1, except that it may sit after that date to hear and determine requests made under the provisions of subdivision (g)(2), below, when such requests are made within the time prescribed by law. Following adjournment upon completion of its duties under subdivisions (g)(1) and (g)(2) of this section, the board shall continue to meet to carry out the authority granted to the board of county commissioners pursuant to G.S. 105-325 as provided in subdivision (g)(5) and subsection (i) of this section. ~~From the time of its first meeting until its adjournment, the~~ The board shall meet at such times as it deems reasonably necessary to perform its statutory duties and to receive requests and hear the appeals of taxpayers under the provisions of subdivision (g)(2), below.

(f) Notice of Meetings and Adjournment. -- A notice of the date, hours, place, and purpose of the first meeting of the board of equalization and review shall be published at least three times in some newspaper having general circulation in the county, the first publication to be at least 10 days prior to the first meeting. The notice shall also state the dates and hours on which the board will meet following its first meeting and the date on which it expects to adjourn; it shall also carry a statement that in the event of earlier or later adjournment, notice to that effect will be published in the same newspaper. Should a notice be required on account of earlier adjournment, it shall be published at least once in the newspaper in which the first notice was published, such publication to be at least five days prior to the date fixed for adjournment. Should a notice be required on account of later adjournment, it shall be published at least once in the newspaper in which the first notice was published, such publication to be prior to the date first announced for adjournment.

(g) (1) Powers and Duties. -- It shall be the duty of the board of equalization and review to examine and review the tax lists of the county for the current year to the end that all taxable property shall be listed on the abstracts and tax records of the county and appraised according to the standard required by G.S. 105-283, and the board shall correct the abstracts and tax records to conform to the provisions of this Subchapter. In

carrying out its responsibilities under this subdivision (g)(1), the board, on its own motion or on sufficient cause shown by any person, shall:

- a. List, appraise, and assess any taxable real or personal property that has been omitted from the tax lists.
 - b. Correct all errors in the names of persons and in the description of properties subject to taxation.
 - c. Increase or reduce the appraised value of any property that, in the board's opinion, shall have been listed and appraised at a figure that is below or above the appraisal required by G.S. 105-283; however, the board shall not change the appraised value of any real property from that at which it was appraised for the preceding year except in accordance with the terms of G.S. 105-286 and 105-287.
 - d. Cause to be done whatever else shall be necessary to make the lists and tax records comply with the provisions of this Subchapter.
 - e. Embody actions taken under the provisions of subdivisions (g)(1)a through (g)(1)d, above, in appropriate orders and have the orders entered in the minutes of the board.
 - f. Give written notice to the taxpayer at his last-known address in the event the board shall, by appropriate order, increase the appraisal of any property or list for taxation any property omitted from the tax lists under the provisions of this subdivision (g)(1).
- (2) On request, the board of equalization and review shall hear any taxpayer who owns or controls property taxable in the county with respect to the listing or appraisal of his property or the property of others.
- a. A request for a hearing under this subdivision (g)(2) shall be made in writing to or by personal appearance before the board prior to its adjournment. However, if the taxpayer requests review of a decision made by the board under the provisions of subdivision (g)(1), above, notice of which was mailed fewer than 15 days prior to the board's adjournment, the request for a hearing thereon may be made within 15 days after the notice of the board's decision was mailed.
 - b. Taxpayers may file separate or joint requests for hearings under the provisions of this subdivision (g)(2) at their election.
 - c. At a hearing under provisions of this subdivision (g)(2), the board, in addition to the powers it may exercise under the provisions of subdivision (g)(3), below, shall hear any evidence offered by the appellant, the assessor, and other county officials that is pertinent to the decision of the appeal. Upon the request of an appellant, the board shall subpoena witnesses or documents if there is a reasonable basis for believing that the witnesses have or the documents contain information pertinent to the decision of the appeal.

- d. On the basis of its decision after any hearing conducted under this subdivision (g)(2), the board shall adopt and have entered in its minutes an order reducing, increasing, or confirming the appraisal appealed or listing or removing from the tax lists the property whose omission or listing has been appealed. The board shall notify the appellant by mail as to the action taken on his appeal not later than 30 days after the board's adjournment.
- (3) In the performance of its duties under subdivisions (g)(1) and (g)(2), above, the board of equalization and review may exercise the following powers:
- a. It may appoint committees composed of its own members or other persons to assist it in making investigations necessary to its work. It may also employ expert appraisers in its discretion. The expense of the employment of committees or appraisers shall be borne by the county. The board may, in its discretion, require the taxpayer to reimburse the county for the cost of any appraisal by experts demanded by him if the appraisal does not result in material reduction of the valuation of the property appraised and if the appraisal is not subsequently reduced materially by the board or by the Department of Revenue.
 - b. The board, in its discretion, may examine any witnesses and documents. It may place any witnesses under oath administered by any member of the board. It may subpoena witnesses or documents on its own motion, and it must do so when a request is made under the provisions of subdivision (g)(2)c, above.

A subpoena issued by the board shall be signed by the chairman of the board, directed to the witness or to the person having custody of the document, and served by an officer authorized to serve subpoenas. Any person who willfully fails to appear or to produce documents in response to a subpoena or to testify when appearing in response to a subpoena shall be guilty of a Class 1 misdemeanor.
- (4) Upon the completion of its other duties, the board may submit to the Department of Revenue a report outlining the quality of the reappraisal, any problems it encountered in the reappraisal process, the number of appeals submitted to the board and to the Property Tax Commission, the success rate of the appeals submitted, and the name of the firm that conducted the reappraisal. A copy of the report should be sent by the board to the firm that conducted the reappraisal.
- (5) After adjournment upon completion of its duties under subdivisions (g)(1) and (g)(2) of this section, the special board of equalization and review shall exercise the authority granted to the board of county commissioners under G.S. 105-325. This duty includes hearing appeals of the appraisal, situs, and

taxability of classified motor vehicles pursuant to G.S. 105-330.2(b).

(h) Reappraisal Year Panels. -- If during a reappraisal year the board of county commissioners has appointed additional members to the special board of equalization and review, the chair of the special board may divide the board into separate panels comprised of not fewer than three members in each panel. The chair shall designate one member of each panel to serve as its chair and may change the members of the panels during the year. Three members or a majority of the members of each panel, whichever is greater, shall constitute a quorum for the purpose of transacting any business. A decision of the panel shall be made by a majority of the members. A decision of a panel constitutes a decision of the board of equalization and review.

(i) Motor Vehicle Review Subcommittee. -- The chair of the special board of equalization and review shall appoint a subcommittee at the board's first meeting of the calendar year. The subcommittee shall hear and decide all appeals relating to the appraisal, situs, and taxability of the classified motor vehicles under G.S. 105-330.2(b) and may meet as needed to exercise this authority. The subcommittee shall consist of three board members, and three members shall constitute a quorum for the purpose of transacting business. Once the chair has appointed the subcommittee, the remaining members of the special board of equalization and review shall serve as alternate members of the subcommittee. A decision of the subcommittee shall be made by a majority of the members."

Section 2. Of the initial five appointees to the special board of equalization and review, one shall be appointed to serve a one-year term; two shall be appointed to serve a two-year term; and two shall be appointed to serve a three-year term.

Section 3. Chapter 275 of the 1977 Session Laws is repealed.

Section 4. This act applies only to Union County.

Section 5. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 7th day of October, 1998.

Became law on the date it was ratified.

H.B. 661

SESSION LAW 1998-175

AN ACT TO ALLOW THE HENDERSON COUNTY BOARD OF COMMISSIONERS TO REDISTRICT THEIR RESIDENCY DISTRICTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 153A-22.1(f), as enacted by Chapter 215 of the 1995 Session Laws, reads as rewritten:

"(f) This section applies to ~~Moore County~~ Henderson and Moore Counties only."

Section 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 8th day of October, 1998.

Became law on the date it was ratified.

H.B. 534

SESSION LAW 1998-176

AN ACT TO ALLOW THE TRANSFER OF PROPERTY AND INCOME WITHHOLDING TO ENFORCE SUPPORT ORDERS, AND THE AWARDING OF ALIMONY, AS RECOMMENDED BY THE FAMILY LAW SECTION OF THE NORTH CAROLINA BAR ASSOCIATION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 50-13.4(e) reads as rewritten:

"(e) Payment for the support of a minor child shall be paid by lump sum payment, periodic payments, or by transfer of title or possession of personal property of any interest therein, or a security interest in or possession of real property, as the court may order. The court may order the transfer of title to real property solely owned by the obligor in payment of arrearages of child support so long as the net value of the interest in the property being transferred does not exceed the amount of the arrearage being satisfied. In every case in which payment for the support of a minor child is ordered and alimony or postseparation support is also ordered, the order shall separately state and identify each allowance."

Section 2. G.S. 50-16.7(a) reads as rewritten:

"(a) Alimony or postseparation support shall be paid by lump sum payment, periodic payments, income withholding, or by transfer of title or possession of personal property or any interest therein, or a security interest in or possession of real property, as the court may order. The court may order the transfer of title to real property solely owned by the obligor in payment of lump-sum payments of alimony or postseparation support or in payment of arrearages of alimony or postseparation support so long as the net value of the interest in the property being transferred does not exceed the amount of the arrearage being satisfied. In every case in which either alimony or postseparation support is allowed and provision is also made for support of minor children, the order shall separately state and identify each allowance."

Section 3. G.S. 50-16.7 is amended by adding the following new subsection to read:

"(11) The dependent spouse may apply to the court for an order of income withholding for current or delinquent payments of alimony or postseparation support or for any portion of the payments. If the court orders income withholding, a notice of obligation to withhold shall be served on the payor as required by G.S. 1A-1, Rule 4, Rules of Civil Procedure. Copies of the notice shall be filed with the clerk of court and served upon the supporting spouse by first-class mail."

Section 4. G.S. 110-136.3(b) is amended by adding a new subdivision to read:

"(4) In the enforcement of alimony or postseparation support orders pursuant to G.S. 110-130.2, an obligor shall become subject to income withholding on the earlier of:

- a. The date on which the obligor fails to make legally obligated alimony or postseparation payments; or
- b. The date on which the obligor or obligee requests withholding."

Section 5. G.S. 110-136.4(a)(2) reads as rewritten:

"(2) Contents of advance notice. The advance notice to the obligor shall contain, at a minimum, the following information:

- a. Whether the proposed withholding is based on the obligor's failure to make legally obligated ~~payments in an amount equal to the support payable for one month, child support, alimony or postseparation support payments~~ on the obligor's request for withholding, on the obligee's request for withholding, or on the obligor's eligibility for withholding under G.S. 110-136.3(b)(3);
- b. The amount of overdue child support, overdue alimony or postseparation support payments, the total amount to be withheld, and when the withholding will occur;
- c. The name of each child or person for whose benefit the child ~~support is~~ support, alimony or postseparation support payments are due and information sufficient to identify the court order under which the obligor has a duty to support the ~~child; child, spouse, or former spouse;~~
- d. The amount and sources of disposable income;
- e. That the withholding will apply to the obligor's wages or other sources of disposable income from current payors and all subsequent payors once the procedures under this section are invoked;
- f. An explanation of the obligor's rights and responsibilities pursuant to this section;
- g. That withholding will be continued until terminated pursuant to G.S. 110-136.10."

Section 6. G.S. 110-136.6 is amended by adding the following new subsection to read:

"(b1) When there is an order of income withholding for current or delinquent payments of alimony or postseparation support or for any portion of the payments, the total amount withheld under this Article and under G.S. 50-16.7 shall not exceed the amounts allowed under section 303(b) of the Consumer Credit Protection Act, 15 U.S.C. § 1673(b)."

Section 7. G.S. 110-136.8(b) reads as rewritten:

"(b) Payor's responsibilities. A payor who has been properly served with a notice to withhold is required to:

- (1) Withhold from the obligor's disposable income and, within 7 business days of the date the obligor is paid, send to the clerk of superior court or State collection and disbursement unit, as specified in the notice, the amount specified in the notice and the date the amount was withheld, but in no event more than the amount allowed by G.S. 110-136.6; however, if a lesser amount of disposable income is available for any pay period, the payor shall either: (a) compute and send the appropriate amount to the

- clerk of court, using the percentages as provided in G.S. 110-136.6, or (b) request the initiating party to inform the payor of the proper amount to be withheld for that period;
- (2) Continue withholding until further notice from the IV-D agency, the clerk of superior court, or the State collection and disbursement unit;
 - (3) Withhold for child support before withholding pursuant to any other legal process under State law against the same disposable income;
 - (4) Begin withholding from the first payment due the obligor in the first pay period that occurs 14 days following the date the notice of the obligation to withhold was served on the payor;
 - (5) Promptly notify the obligee in a IV-D case, or the clerk of superior court or the State collection and disbursement unit in a non-IV-D case, in writing:
 - a. ~~If there is more than one child support withholding for the obligor;~~ are one or more orders of child support withholding for the obligor;
 - a1. If there are one or more orders of alimony or postseparation support withholding for the obligor;
 - b. When the obligor terminates employment or otherwise ceases to be entitled to disposable income from the payor, and provide the obligor's last known address, and the name and address of his new employer, if known;
 - c. Of the payor's inability to comply with the withholding for any reason; and
 - (6) Cooperate fully with the initiating party in the verification of the amount of the obligor's disposable income."

Section 8. G.S. 50-16.1A is amended by adding the following new subdivision to read:

"(4a) 'Payor' means any payor, including any federal, State, or local governmental unit, of disposable income to an obligor. When the payor is an employer, payor means employer as defined under 20 U.S.C. § 203(d) of the Fair Labor Standards Act."

Section 9. G.S. 110-129(11) reads as rewritten:

"(11) 'Obligee', in a IV-D case, means the child support enforcement agency, and in a non-IV-D case means the individual to whom a duty of ~~support~~ support, whether child support, alimony, or postseparation support, is owed or the individual's legal representative."

Section 10. G.S. 110-129(12) reads as rewritten:

"(12) 'Obligor' means the individual who owes a duty to make child support payments or payments of alimony or postseparation support under a court order."

Section 11. G.S. 50-16.3A(b) is amended by adding the following new subdivision to read:

"(16) The fact that income received by either party was previously considered by the court in determining the value of a marital or

divisible asset in an equitable distribution of the parties' marital or divisible property."

Section 12. This act becomes effective January 1, 1999. Sections 1 through 10 of this act apply to actions pending on or after the effective date. Section 11 applies to actions filed on or after the effective date.

In the General Assembly read three times and ratified this the 30th day of September, 1998.

Became law upon approval of the Governor at 3:10 p.m. on the 8th day of October, 1998.

S.B. 427

SESSION LAW 1998-177

AN ACT TO ALLOW OVERWEIGHT TRUCKS TRANSPORTING APPLES AND CHRISTMAS TREES TO OPERATE ON CERTAIN LIGHT-DUTY ROADS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-118(c) reads as rewritten:

"(c) Exceptions. -- The following exceptions apply to G.S. 20-118(b) and 20-118(e).

- (1) Two consecutive sets of tandem axles may carry a gross weight of 34,000 pounds each without penalty provided the overall distance between the first and last axles of the consecutive sets of tandem axles is 36 feet or more.
- (2) When a vehicle is operated in violation of G.S. 20-118(b)(1), 20-118(b)(2), or 20-118(b)(3), but the gross weight of the vehicle or combination of vehicles does not exceed that permitted by G.S. 20-118(b)(3), the owner of the vehicle shall be permitted to shift the load within the vehicle, without penalty, from one axle to another to comply with the weight limits in the following cases:
 - a. Where the single-axle load exceeds the statutory limits, but does not exceed 21,000 pounds.
 - b. Where the vehicle or combination of vehicles has tandem axles, but the tandem-axle weight does not exceed 40,000 pounds.
- (3) When a vehicle is operated in violation of G.S. 20-118(b)(4) the owner of the vehicle shall be permitted, without penalty, to shift the load within the vehicle from one axle to another to comply with the weight limits where the single-axle weight does not exceed the posted limit by 2,500 pounds.
- (4) A truck or other motor vehicle shall be exempt from such light-traffic road limitations provided for pursuant to G.S. 20-118(b)(4), when transporting supplies, material or equipment necessary to carry out a farming operation engaged in the production of meats and agricultural crops and livestock or poultry by-products or a business engaged in the harvest or processing of seafood when the destination of such vehicle and load is located solely upon said light-traffic road.

- (5) The light-traffic road limitations provided for pursuant to subdivision (b)(4) of this section do not apply to a vehicle while that vehicle is transporting only the following from its point of origin on a light-traffic road to the nearest highway that is not a light-traffic road:
- a. Processed or unprocessed seafood transported from boats or any other point of origin to a processing plant or a point of further distribution.
 - b. Meats or agricultural crop products transported from a farm to first market.
 - c. Forest products originating and transported from a farm or from woodlands to first market without interruption or delay for further packaging or processing after initiating transport.
 - d. Livestock or poultry transported from their point of origin to first market.
 - e. Livestock by-products or poultry by-products transported from their point of origin to a rendering plant.
 - f. Recyclable material transported from its point of origin to a scrap-processing facility for processing. As used in this subpart, the terms "recyclable" and "processing" have the same meaning as in G.S. 130A-290(a).
 - g. Garbage collected by the vehicle from residences or garbage dumpsters if the vehicle is fully enclosed and is designed specifically for collecting, compacting, and hauling garbage from residences or from garbage dumpsters. As used in this subpart, the term "garbage" does not include hazardous waste as defined in G.S. 130A-290(a), spent nuclear fuel regulated under G.S. 20-167.1, low-level radioactive waste as defined in G.S. 104E-5, or radioactive material as defined in G.S. 104E-5.
 - h. Treated sludge collected from a wastewater treatment facility.
 - i. Apples when transported from the orchard to the first processing or packing point.
 - j. Trees grown as Christmas trees from the field, farm, stand, or grove to first processing point.
- (6) A truck or other motor vehicle shall be exempt from such light-traffic road limitations provided by G.S. 20-118(b)(4) when such motor vehicles are owned, operated by or under contract to a public utility, electric or telephone membership corporation or municipality and such motor vehicles are used in connection with installation, restoration or emergency maintenance of utility services.
- (7) A wrecker may tow a disabled vehicle or combination of vehicles in an emergency to the nearest feasible point for parking or storage without being in violation of G.S. 20-118 provided that the wrecker and towed vehicle or combination of vehicles otherwise meet all requirements of this section.
- (8) A firefighting vehicle operated by any member of a municipal or rural fire department in the performance of his duties, regardless

of whether members of that fire department are paid or voluntary and any vehicle of a voluntary lifesaving organization, when operated by a member of that organization while answering an official call shall be exempt from such light-traffic road limitations provided by G.S. 20-118(b)(4).

- (9) Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 761, s. 12.
- (10) Fully enclosed motor vehicles designed specifically for collecting, compacting and hauling garbage from residences, or from garbage dumpsters shall, when operating for those purposes, be allowed a single axle weight not to exceed 23,500 pounds on the steering axle on vehicles equipped with a boom, or on the rear axle on vehicles loaded from the rear. This exemption shall not apply to vehicles transporting hazardous waste as defined in G.S. 130A-290(a)(8), spent nuclear fuel regulated under G.S. 20-167.1, low-level radioactive waste as defined in G.S. 104E-5(9a), or radioactive material as defined in G.S. 104E-5(14).
- (11) A truck or other motor vehicle shall be exempt for light-traffic road limitations issued under subdivision (b)(4) of this section when transporting heating fuel for on-premises use at a destination located on the light-traffic road.
- (12) Subsections (b) and (e) of this section do not apply to a vehicle that (i) is hauling agricultural crops from the farm where they were grown to first market, (ii) is within 35 miles of that farm, (iii) does not operate on an interstate highway or posted bridge while hauling the crops, and meets one of the following descriptions:
 - a. Is a five-axle combination with a gross weight of no more than 90,000 pounds, a single-axle weight of no more than 22,000 pounds, a tandem-axle weight of no more than 42,000 pounds, and a length of at least 51 feet between the first and last axles of the combination.
 - b. Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 761, s. 13.
 - c. Is a four-axle combination with a gross weight that does not exceed the limit set in subdivision (b)(3) of this section, a single-axle weight of no more than 22,000 pounds, and a tandem-axle weight of no more than 42,000 pounds."

Section 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 29th day of September, 1998.

Became law upon approval of the Governor at 3:12 p.m. on the 8th day of October, 1998.

S.B. 1228

SESSION LAW 1998-178

AN ACT TO ENHANCE THE CRIMINAL PROVISIONS FOR TAX VIOLATIONS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-236(7) reads as rewritten:

"(7) Attempt to Evade or Defeat Tax. -- Any person who willfully attempts, or any person who aids or abets any person to attempt in any manner to evade or defeat a tax or its payment, shall, in addition to other penalties provided by law, be guilty of a ~~Class I felony which may include a fine up to twenty-five thousand dollars (\$25,000).~~ Class H felony."

Section 2. G.S. 105-236(9a) reads as rewritten:

"(9a) Aid or Assistance. -- Any person, pursuant to or in connection with the revenue laws, who willfully aids, assists in, procures, counsels, or advises the preparation, presentation, or filing of a return, affidavit, claim, or any other document that the person knows is fraudulent or false as to any material matter, whether or not the falsity or fraud is with the knowledge or consent of the person authorized or required to present or file the return, affidavit, claim, or other document, shall be guilty of a ~~Class I felony which may include a fine up to ten thousand dollars (\$10,000).~~ Class H felony."

Section 3. This act becomes effective December 1, 1998, and applies to offenses occurring on or after that date.

In the General Assembly read three times and ratified this the 29th day of September, 1998.

Became law upon approval of the Governor at 3:14 p.m. on the 8th day of October, 1998.

H.B. 1490

SESSION LAW 1998-179

AN ACT TO EXTEND THE TIME FOR THE RESOLUTION OF CLAIMS TO LAND UNDER NAVIGABLE WATERS, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 113-206 reads as rewritten:

"§ 113-206. *Chart of grants, leases and fishery rights; overlapping leases and rights; contest or condemnation of claims; damages for taking of property.*

(a) The Secretary must commence to prepare as expeditiously as possible charts of the waters of North Carolina containing the locations of all oyster and clam leaseholds made by the Department under the provisions of this Article and of all existing leaseholds as they are renewed under the provisions of this Article, the locations of all claims of grant of title to portions of the bed under navigable waters registered with him, and the locations of all areas in navigable waters to which a right of private fishery is claimed and registered with him. Charting or registering any claim by the Secretary in no way implies recognition by the State of the validity of the claim.

(a1) If a claim is based on an oyster or other shellfish grantor a perpetual franchise for shellfish cultivation, the Secretary may, to resolve the

claim, grant a shellfish lease to the claimant for part or all of the area claimed. If a claim of exclusive shellfishing rights was registered based upon a conveyance by the Literary Fund, the North Carolina Literary Board or the State Board of Education, and the claimant shows that the area had been cultivated by the claimant or his predecessor in title for the seven-year period prior to registration of the claim, the Secretary may, to resolve the claim, grant a shellfish lease to the claimant for all or part of the area claimed, not to exceed ten acres. A shellfish lease granted under this subsection is subject to the restrictions imposed on shellfish leases in G.S. 113-202, except the prohibition against leasing an area that contains a natural shellfish bed in G.S. 113-202(a)(2). This restriction is waived because, due to the cultivation efforts of the claimant, the area is likely to contain a natural shellfish bed.

(b) In the event of any overlapping of areas leased by the Department, the Secretary shall recommend modification of the areas leased as he deems equitable to all parties. Appeal from the recommendation of the Secretary lies for either party in the same manner as for a lease applicant as to which there is a recommendation of denial or modification of lease. If there is no appeal, or upon settlement of the issue upon appeal, the modified leases must be approved by the Marine Fisheries Commission and reissued by the Secretary in the same manner as initial or renewal leases. Leaseholders must furnish the Secretary surveys of the modified leasehold areas, meeting the requisite criteria for surveys established by the Secretary.

(c) In the event of any overlapping of areas leased by the Department and of areas in which title or conflicting private right of fishery is claimed and registered under the provisions of this Article, the Secretary must give preference to the leaseholder engaged in the production of oysters or clams in commercial quantities who received the lease with no notice of the existence of any claimed grant or right of fishery. To this end, the Secretary shall cause a modification of the claim registered with him and its accompanying survey to exclude the leasehold area. Such modification effected by the Secretary has the effect of voiding the grant of title or right of fishing to the extent indicated.

(d) In the interest of conservation of the marine and estuarine resources of North Carolina, the Department may institute an action in the superior court to contest the claim of title or claimed right of fishery in any navigable waters of North Carolina registered with the Secretary. In such proceeding, the burden of showing title or right of fishery, by the preponderance of the evidence, shall be upon the claiming title or right holder. In the event the claiming title or right holder prevails, the trier of fact shall fix the monetary worth of the claim. The Department may elect to condemn the claim upon payment of the established owners or right holders their pro rata shares of the amount so fixed. The Department may make such payments from such funds as may be available to it. An appeal lies to the appellate division by either party both as to the validity of the claim and as to the fairness of the amount fixed. The Department in such actions may be represented by the Attorney General. In determining the availability of funds to the Department to underwrite the costs of litigation or make condemnation payments, the use which the Department proposes to make of the area in question may be

considered; such payments are to be deemed necessary expenses in the course of operations attending such use or of developing or attempting to develop the area in the proposed manner.

(e) A person who claims that the application of G.S. 113-205 or this section has deprived him of his private property rights in land under navigable waters or his right of fishery in navigable waters without just compensation may file a complaint in the superior court of the county in which the property is located to contest the application of G.S. 113-205 or this section. If the plaintiff prevails, the trier of fact shall fix the monetary worth of the claim, and the Department may condemn the claim upon payment of this amount to him if the Secretary considers condemnation appropriate and necessary to conserve the marine and estuarine resources of the State. The Department may pay for a condemned claim from available funds. An action under this subsection is considered a condemnation action and is therefore subject to G.S. 7A-248.

The limitation period for an action brought under this subsection is three years. This period is tolled during the disability of the plaintiff. No action, however, may be instituted under this subsection after ~~December 31, 2001,~~ 31 December 2006.

(f) In evaluating claims registered pursuant to G.S. 113-205, the Secretary shall favor public ownership of submerged lands and public trust rights. The Secretary's action does not alter or affect in any way the rights of a claimant or the State.

To facilitate resolution of claims registered pursuant to G.S. 113-205, the Secretary, in cooperation with the Secretary of Administration and the Attorney General, shall establish a plan to resolve these claims by ~~December 31, 1998,~~ 31 December 2003. The Secretary shall notify the Secretary of Administration and the Attorney General of the resolution of each claim. In addition, on or before October 1 of each year, the Secretary shall submit a report to the Joint Legislative Commission on Governmental Operations stating the following:

- (1) The number of claims registered pursuant to G.S. 113-205 that were resolved during the preceding year;
- (2) The cost of resolving these claims;
- (3) The number of unresolved claims; and
- (4) Payments made to acquire claims by condemnation."

Section 2. G.S. 105-151.12(e) reads as rewritten:

"(e) In the case of marshland for which a claim has been filed pursuant to G.S. 113-205, the offer of donation must be made before ~~December 31, 1998,~~ 31 December 2003 to qualify for the credit allowed by this section."

Section 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 29th day of September, 1998.

Became law upon approval of the Governor at 3:14 p.m. on the 8th day of October, 1998.

AN ACT TO IMPLEMENT A RECOMMENDATION OF THE JOINT LEGISLATIVE UTILITY REVIEW COMMITTEE TO ALLOW SHARED TENANT PROVIDERS TO OBTAIN LINE ACCESS FROM ANY CERTIFICATED LOCAL PROVIDER OF TELEPHONE SERVICE AND TO ALLOW FLAT RATE ACCESS LINES TO PREMISES PROVIDING ACCOMMODATIONS TO TRANSIENT PATRONS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 62-110(d) reads as rewritten:

"(d) The Commission shall be authorized, consistent with the public interest and notwithstanding any other provision of law, to adopt procedures for the purpose of allowing shared use and/or resale of any telephone service provided to persons who occupy the same contiguous premises (as such term shall be defined by the Commission); provided, however, that there shall be no 'networking' of any services authorized under this subsection whereby two or more premises where such services are provided are connected, and provided further that ~~the certificated local exchange telephone company shall be the only provider of~~ any certificated local provider or any other provider authorized by the Commission may provide access lines or trunks connecting such authorized service to the telephone network, and that the local service rates permitted or approved by the Commission for local exchange lines or trunks being shared or resold shall be fully compensatory and on a measured usage basis where facilities are available or on a message rate basis otherwise. Provided however, the Commission may permit or approve rates on bases other than measured or message for shared service flat rates, measured rates, message rates, or some combination of those rates for shared or resold services whenever the service is offered to patrons of hotels or motels, occupants of timeshare or condominium complexes serving primarily transient occupants, to patrons of hospitals, nursing homes, rest homes, or licensed retirement centers, or to members of clubs or students living in quarters furnished by educational institutions, or to persons temporarily subleasing a residential premise, premises. The Commission shall issue rules to implement the service authorized by this subsection, considering the competitive nature of the offerings and, notwithstanding any other provision of law, the Commission shall determine the extent to which such services shall be regulated and, to the extent necessary to protect the public interest, regulate the terms, conditions, and rates charged for such services and the terms and conditions for interconnection to the local exchange network. The Commission shall require any person offering telephone service under this subsection by means of a Private Branch Exchange ('PBX') or key system to secure adequate local exchange trunks from ~~the local exchange telephone company~~ any certificated local provider or any other provider authorized by the Commission so as to assure a quality of service equal to the quality of service generally found acceptable by the Commission. Unless otherwise ordered by the Commission for good cause shown by the company, the right and obligation of the local exchange

carrier certificated local provider or any other provider authorized by the Commission to provide local service directly to any person located within its certificated service area shall continue to apply to premises where shared or resold telephone service is available, provided however, the Commission shall be authorized to establish the terms and conditions under which such services should be provided."

Section 2. G.S. 62-110(e) reads as rewritten:

"(e) Notwithstanding subsection (d) of this section, the Commission may authorize any telephone services provided to a nonprofit college or university, and its affiliated medical centers, which is qualified under Sections 501 and 170 of the United States Internal Revenue Code of 1986 or which is a State-owned institution, to be shared or resold by that institution on both contiguous campus premises owned or leased by the institution and noncontiguous premises owned or leased exclusively by the institution, provided these services are offered to students or guests housed in quarters furnished by the institution, patrons of hospitals or medical centers of the institution, or persons or businesses providing educational, research, professional, consulting, food, or other support services directly to or for the institution, its students, or guests. The services of ~~the certified local exchange telephone company,~~ a certificated local provider or any other provider authorized by the Commission, when provided to said colleges, universities, and affiliated medical centers shall be rated in the same way as those provided for shared service offered to patrons of hospitals, nursing homes, rest homes, licensed retirement centers, members of clubs or students living in quarters furnished by educational institutions as provided for in subsection (d) of this section. The institutions regulated pursuant to this subsection shall not be prohibited from electing optional services from the ~~certificated local exchange telephone company~~ certificated local provider or any other provider authorized by the Commission which include measured or message rate services. There shall be no 'networking' of any services authorized under this subsection whereby two or more different institutions where such services are provided are interconnected. ~~The certified local exchange telephone company shall be the only provider of~~ Any certificated local provider or any other provider authorized by the Commission may provide access lines or trunks connecting such authorized services to the telephone network. The Commission shall require such institutions to secure adequate local exchange trunks from the ~~certified local exchange telephone company~~ certificated local provider or any other provider authorized by the Commission to assure a quality of service equal to the quality of service generally found acceptable by the Commission. Unless otherwise ordered by the Commission for good cause shown by the ~~certified local exchange telephone company,~~ certificated local provider or any other provider authorized by the Commission, the right and obligation of ~~the local exchange company~~ that provider to provide local service directly to any person located within its certificated service area shall continue to apply to premises where shared or resold telephone service is available under this subsection, provided however, the Commission shall be authorized to establish the terms and conditions under which such service should be

provided. The Commission shall ~~issued~~ issue rules to implement the services authorized by this subsection."

Section 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 29th day of September, 1998.

Became law upon approval of the Governor at 3:16 p.m. on the 8th day of October, 1998.

H.B. 1469

SESSION LAW 1998-181

AN ACT REORGANIZING THE STATE PERSONNEL COMMISSION AND AUTHORIZING THE CHAIR OF THE STATE PERSONNEL COMMISSION TO APPOINT PANELS OF ITS MEMBERS TO MAKE RECOMMENDATIONS TO THE FULL COMMISSION REGARDING THE FINAL DECISION IN CONTESTED CASES AND TO MAKE CHANGES TO THE EMPLOYEE INCENTIVE BONUS PROGRAM.

The General Assembly of North Carolina enacts:

Section 1. (a) G.S. 126-2(b) reads as rewritten:

"(b) The Commission shall consist of ~~seven members who shall be nine members, seven appointed by the Governor on July 1, 1965, or as soon thereafter as is practicable. Two~~ and two appointed by the General Assembly. Of the members of the Commission appointed by the Governor, two shall be chosen from employees of the State subject to the provisions of this Chapter; two members shall be appointed, of which one shall be an employee of local government subject to the provisions of this Chapter, from a list of individuals nominated by the North Carolina association of county commissioners; two members shall be individuals actively engaged in the management of a private business or industry; and one member shall be appointed from the public at large. Of the members of the Commission appointed by the General Assembly, two shall be attorneys licensed to practice law in North Carolina, one of whom shall be appointed upon the recommendation of the Speaker of the House of Representatives, and one of whom shall be appointed upon the recommendation of the President Pro Tempore of the Senate. Of the initial members of the ~~Commission,~~ Commission appointed by the Governor, two shall be appointed to serve for terms of two years, two shall be appointed to serve for terms of four years, and three shall be appointed to serve for terms of six years. Their successors shall be appointed by the Governor for terms of six years. The initial two attorney members appointed by the General Assembly shall serve terms expiring June 30, 2004; the terms of subsequent appointees shall be six years. Any vacancy occurring prior to the expiration of a term shall be filled by appointment for the unexpired term."

(b) G.S. 126-2 as amended by subsection (a) of this section reads as rewritten:

"§ 126-2. *State Personnel Commission.*

(a) There is hereby established the State Personnel Commission (hereinafter referred to as 'the Commission').

~~(b) The Commission shall consist of nine members, two appointed by the Governor and two appointed by the General Assembly. Of the members of the Commission appointed by the Governor, two shall be chosen from employees of the State subject to the provisions of this Chapter; two members shall be appointed, of which one shall be an employee of local government subject to the provisions of this Chapter, from a list of individuals nominated by the North Carolina association of county commissioners; two members shall be individuals actively engaged in the management of a private business or industry; and one member shall be appointed from the public at large. Of the members of the Commission appointed by the General Assembly, two shall be appointed as follows:~~

- ~~(1) Two members shall be attorneys licensed to practice law in North Carolina, Carolina appointed by the General Assembly, one of whom shall be appointed upon the recommendation of the Speaker of the House of Representatives, and one of whom shall be appointed upon the recommendation of the President Pro Tempore of the Senate.~~

~~Of the initial members of the Commission appointed by the Governor, two shall be appointed to serve for terms of two years, two shall be appointed to serve for terms of four years, and three shall be appointed to serve for terms of six years. Their successors shall be appointed by the Governor for terms of six years.~~

~~The initial two attorney members appointed by the General Assembly under this subdivision shall serve terms expiring June 30, 2004; the terms of subsequent appointees shall be six years. Any vacancy occurring prior to the expiration of a term shall be filled by appointment for the unexpired term.~~

- ~~(2) Two persons from private business or industry appointed by the Governor, both of whom shall have a working knowledge of, or practical experience in, human resources management. The initial members appointed under this subdivision shall serve terms expiring June 30, 2003; the terms of subsequent appointees shall be six years.~~
- ~~(3) Two State employees subject to the State Personnel Act serving in nonexempt positions, appointed by the Governor. One employee shall serve in a State government position having supervisory duties, and one employee shall serve in a nonsupervisory position. Neither employee may be a human resources professional. The Governor shall consider nominations submitted by the State Employees Association of North Carolina. The initial members appointed under this subdivision shall serve terms expiring June 30, 2001; the terms of subsequent appointees shall be six years.~~
- ~~(4) Two local government employees subject to the State Personnel Act appointed by the Governor upon recommendation of the North Carolina Association of County Commissioners, one a nonsupervisory local employee and one a supervisory local employee. Neither local government employee may be a human resources professional. The initial members appointed under this~~

subdivision shall serve terms expiring June 30, 2003; the terms of subsequent appointees shall be for six years.

- (5) One member of the public at large appointed by the Governor. The initial member appointed under this subdivision shall serve for a term expiring June 30, 2001; the terms of subsequent appointees shall be for six years.

~~(c) Members of the Commission appointed after February 1, 1976, shall be appointed subject to confirmation by the General Assembly of North Carolina. If the General Assembly is not in session when an appointment is made, the appointee shall temporarily exercise all of the powers of a confirmed member until the convening of the next legislative session. If the General Assembly does not act on confirmation of a proposed member within 30 legislative days of the submission of the name, the member shall be considered confirmed. If the Governor does not appoint a new member within 60 calendar days of the occurrence of a vacancy or the rejection of an appointment by the General Assembly, the remaining members of the Commission shall have the authority to fill the vacancy. may serve no more than two consecutive terms. Appointments by the General Assembly shall be made in accordance with G.S. 120-121, and vacancies in those appointments shall be filled in accordance with G.S. 120-122. Vacancies in appointments made by the Governor occurring prior to the expiration of a term shall be filled by appointment for the unexpired term.~~

~~(d) No member of the Commission may serve on a case where there would be a conflict of interest. The Governor appointing authority may at any time after notice and hearing remove any Commission member for gross inefficiency, neglect of duty, malfeasance, misfeasance, or nonfeasance in office, cause.~~

~~(e) Members of the Commission who are employees of the State subject to the provisions of this Article State or local government employees subject to the State Personnel Act shall be entitled to administrative leave without loss of pay for all periods of time required to conduct the business of the Commission.~~

~~(f) Four Six~~ members of the Commission shall constitute a quorum.

~~(g) The Governor shall designate one member of the Commission as chairman, chair.~~

~~(h) The Commission shall meet quarterly, and at other times at the call of the chairman, chair."~~

Section 2. Article 1 of Chapter 126 of the General Statutes is amended by adding a new section to read:

"§ 126-4.1. Commission panels may recommend final agency decisions.

(a) The State Personnel Commission ('Commission') may make a final agency decision in a contested case brought under Article 3 of Chapter 150B of the General Statutes upon the recommendation of a panel of its members appointed by the Chair.

(b) For contested case purposes, the Chair of the Commission may appoint panels of four members, with three panelists constituting a quorum of the panel. The Chair shall make every effort to provide that each category of Commission membership enumerated in G.S. 126-2(b) shall be represented on the appointed panels.

(c) When a panel hears and makes a recommendation in a contested case, that recommendation shall then be referred to the full Commission. Upon referral, the full Commission may either:

- (1) Accept the recommendation of the panel and incorporate the panel's recommendation as the Commission's final decision; or
- (2) Reject the recommendation of the panel and make a final decision upon consideration by the full Commission."

Section 3. G.S. 120-123 is amended by adding a new subdivision to read:

"(68) The State Personnel Commission."

Section 4. The terms of members of the State Personnel Commission appointed pursuant to G.S. 126-2 as it was in effect prior to the effective date of this act, shall expire on June 30, 1999. Any vacancy occurring on the Commission prior to June 30, 1999, shall be filled in accordance with Section 1 of this act.

Section 5. G.S. 143-345.21(c) reads as rewritten:

"(c) Savings generated by suggestions and innovations shall be determined at the end of the fiscal year in which the suggestion or innovation is implemented. ~~implemented~~ or the determination may be carried over for one full fiscal year after implementation before making an award if the actual savings cannot be verified before the end of the fiscal year. Any savings are to be calculated using the actual expenditures for a program, activity, or service compared to the budgeted amount for the same, if an amount has been budgeted for the program, activity, or service. The savings calculation shall include the amount of any reversions in excess of the baseline reversion. The savings or revenue increases realized from any suggestion or innovation implemented for less than one full fiscal year shall be annualized. Any savings realized through the State Employee Incentive Bonus Program shall be weighed against continued service to the public."

Section 6. G.S. 143-345.22(a) reads as rewritten:

"(a) If a State employee's suggestion or innovation results in a monetary savings or increased revenue to the State, the funds saved or increased shall be distributed according to the following ~~scale;~~ scale or subject to guidelines as set forth by the funding source:

- (1) Twenty percent (20%) of the annualized savings or increased revenues, up to a maximum of twenty thousand dollars (\$20,000) for any one State employee, to constitute gainsharing. If a team of State employees is the suggester, the bonus provided in this subdivision shall be divided equally among the team members, except that no team member may receive in excess of twenty thousand dollars (\$20,000), nor may the team receive an aggregate amount in excess of one hundred thousand dollars (\$100,000).
- (2) Thirty percent (30%) ~~to a performance bonus reserve for all current employees of the employing unit of the suggester, to be distributed according to G.S. 126-7, the Comprehensive Compensation System for State employees, or according to the performance bonus compensation system in which the suggester's employing unit participates.~~ for all current employees in the work

unit, as designated by the agency head, of the employing unit of the suggester.

- (3) The remainder to the General Fund for nonrecurring budget items."

Section 7. G.S. 143-345.23(b) reads as rewritten:

"(b) The duties of the agency coordinator shall include:

- (1) Serving as an information source and maintaining sufficient forms necessary to submit suggestions.
- (2) Responsibility for presenting, in conjunction with the agency evaluator, the plan of implementation for a suggestion or innovation to the Review Committee.
- (3) Working in conjunction with the agency evaluator designated by the State Agency Coordinator for a particular suggestion or innovation.

An agency may have more than one coordinator if required to provide sufficient services to State employees."

Section 8. Section 1(a) of this act is effective when it becomes law. Section 1(b) of this act becomes effective June 30, 1999. Section 2 of this act shall not be effective until the appointments are made in accordance with G.S. 126-2(b) as amended by Section 1(a) of this act. The remainder of this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 7th day of October, 1998.

Became law upon approval of the Governor at 11:45 a.m. on the 13th day of October, 1998.

S.B. 1336

SESSION LAW 1998-182

AN ACT TO IMPLEMENT THE RECOMMENDATIONS OF THE GOVERNOR'S DWI TASK FORCE AND THE JOINT CORRECTIONS AND CRIME CONTROL OVERSIGHT COMMITTEE TO REVISE THE DWI FORFEITURE LAWS AND OTHER RELATED LAWS; TO PROVIDE FOR "ZERO-TOLERANCE" FOR COMMERCIAL DRIVERS, DRIVERS OF SCHOOL BUSES, SCHOOL ACTIVITY BUSES, AND CHILD CARE VEHICLES; AND TO PROVIDE FOR IMMEDIATE ADMINISTRATIVE LICENSE REVOCATIONS FOR ALL PERSONS UNDER TWENTY-ONE YEARS OF AGE; AND TO INCREASE THE FINES FOR DWI OFFENSES AND TO MAKE CONFORMING CHANGES.

The General Assembly of North Carolina enacts:

PART I. DW FORFEITURE REVISIONS.

Section 1. G.S. 20-4.01(1b) reads as rewritten:

"(1b) Alcohol Concentration. -- The concentration of alcohol in a person, expressed either as:

- a. Grams of alcohol per 100 milliliters of blood; or
- b. Grams of alcohol per 210 liters of breath.

The results of a defendant's alcohol concentration determined by a chemical analysis of the defendant's breath or blood shall be

reported to the hundredths. Any result between hundredths shall be reported to the next lower hundredth."

Section 1.1. G.S. 20-4.01(24a) reads as rewritten:

"(24a) Offense Involving Impaired Driving. -- Any of the following offenses:

- a. Impaired driving under G.S. 20-138.1.
- b. Death by vehicle under G.S. 20-141.4 when conviction is based upon impaired driving or a substantially equivalent offense under previous law.
- c. ~~Second~~ First or second degree murder under G.S. 14-17 or involuntary manslaughter under G.S. 14-18 when conviction is based upon impaired driving or a substantially equivalent offense under previous law.
- d. An offense committed in another jurisdiction substantially equivalent to the offenses in subparagraphs a through c.
- e. A repealed or superseded offense substantially equivalent to impaired driving, including offenses under former G.S. 20-138 or G.S. 20-139.
- f. Impaired driving in a commercial motor vehicle under G.S. 20-138.2, except that convictions of impaired driving under G.S. 20-138.1 and G.S. 20-138.2 arising out of the same transaction shall be considered a single conviction of an offense involving impaired driving for any purpose under this Chapter.
- g. Habitual impaired driving under G.S. 20-138.5.

A conviction under former G.S. 20-140(c) is not an offense involving impaired driving."

Section 2. G.S. 20-28.2 reads as rewritten:

"§ 20-28.2. *Forfeiture of motor vehicle for impaired driving after impaired driving license revocation.*

(a) **Meaning of 'Impaired Driving License Revocation'.** -- The revocation of a person's ~~driver's~~ drivers license is an impaired driving license revocation if the revocation is pursuant to:

- (1) G.S. 20-13.2, 20-16(a)(8b), 20-16.2, 20-16.5, 20-17(a)(2), 20-17(a)(12), ~~or 20-17.2;~~ 20-17.2, or 20-138.5; or
- (2) G.S. 20-16(a)(7), 20-17(a)(1), ~~or 20-17(a)(3),~~ 20-17(a)(9), or 20-17(a)(11), if the offense involves impaired driving.

(a1) ~~[Definitions.]~~ Definitions. -- As used in this section and in G.S. 20-28.3, 20-28.4, 20-28.5, ~~and 20-28.6,~~ 20-28.7, 20-28.8, and 20-28.9, the following terms mean:

- (1) **Acknowledgment.** -- A written document acknowledging that:
 - a. The motor vehicle was operated by a person charged with an offense involving impaired driving while that person's drivers license was revoked as a result of a prior impaired drivers license revocation;
 - b. If the motor vehicle is again operated by this particular person, at any time while that person's drivers license is revoked, and the person is charged with an offense involving

- impaired driving, the motor vehicle is subject to impoundment and forfeiture; and
- c. A lack of knowledge or consent to the operation will not be a defense in the future, unless the motor vehicle owner has taken all reasonable precautions to prevent the use of the motor vehicle by this particular person and immediately reports, upon discovery, any unauthorized use to the appropriate law enforcement agency.
- (1a) Fair Market Value. -- The value of the seized motor vehicle, as determined in accordance with the schedule of values adopted by the Commissioner pursuant to G.S. 105-187.3.
- (2) Innocent Party Owner. -- A motor vehicle ~~owner who;~~ owner:
- a. ~~Did not~~ Who did not know and had no reason to know that the defendant's drivers license was revoked;
 - b. ~~Knew~~ Who knew that the defendant's drivers license was revoked, but the defendant drove the vehicle without the person's expressed or implied permission;
 - c. Whose vehicle was reported stolen;
 - d. Who files a police report for unauthorized use of the motor vehicle and agrees to prosecute the unauthorized operator of the motor vehicle;
 - e. Who is in the business of renting vehicles, the driver is not listed as an authorized driver on the rental contract; or
 - f. Who is in the business of leasing motor vehicles, who holds legal title to the motor vehicle as a lessor at the time of seizure and who has no actual knowledge of the revocation of the lessee's drivers license at the time the lease is entered.
- (2a) Insurance Company. -- Any insurance company that has coverage on or is otherwise liable for repairs or damages to the motor vehicle at the time of the seizure.
- (2b) Insurance Proceeds. -- Proceeds paid under an insurance policy for damage to a seized motor vehicle less any payments actually paid to valid lienholders and for towing and storage costs incurred for the motor vehicle after the time the motor vehicle became subject to seizure.
- (3) Lienholder. -- A person who holds a perfected security interest in a motor vehicle at the time of seizure.
- (3a) Motor Vehicle Owner. -- A person in whose name a registration card or certificate of title for a motor vehicle is issued at the time of seizure.
- (4) Order of Forfeiture. -- An order by the court which terminates the rights and ownership interest of a motor vehicle owner in a motor vehicle and any insurance proceeds or proceeds of sale in accordance with G.S. 20-28.2.
- (5) Possessory Lien. -- ~~A lien for all costs and fees associated with the towing, storage, or sale of a vehicle pursuant to this section. This lien shall have priority over perfected and unperfected security interests. Storage fees subject to this lien shall not exceed five dollars (\$5.00) per day.~~

- (6) Registered Owner. -- A person in whose name a registration card for a motor vehicle is ~~issued~~, issued at the time of seizure.
- (7) ~~Vehicle Owner. -- A person in whose name a registration card or certificate of title for a motor vehicle is issued.~~

(b) When Motor Vehicle Becomes Property Subject to Order of Forfeiture. -- If at a sentencing hearing ~~conducted pursuant to G.S. 20-179 or 20-138.5 the judge determines that the grossly aggravating factor described in G.S. 20-179(c)(2) applies,~~ for the underlying offense involving impaired driving, at a separate hearing after conviction of the defendant, or at a forfeiture hearing held at least 60 days after the defendant failed to appear at the scheduled trial for the underlying offense and the defendant's order of arrest for failing to appear has not been set aside, the judge determines by the greater weight of the evidence that the defendant is guilty of an offense involving impaired driving and that the defendant's license was revoked pursuant to an impaired driving license revocation as defined in subsection (a) of this section, the motor vehicle that was driven by the defendant at the time the defendant committed the offense of ~~impaired driving~~ becomes property subject to an order of forfeiture.

(c) Duty of Prosecutor to Notify Possible Innocent Parties. -- In any case in which a prosecutor determines that a motor vehicle driven by a defendant may be subject to forfeiture under this ~~section~~, section and the motor vehicle has not been permanently released to a nondefendant vehicle owner pursuant to G.S. 20-28.3(e1), a defendant owner pursuant to G.S. 20-28.3(e2), or a lienholder, pursuant to G.S. 20-28.3(e3), the prosecutor shall ~~determine the identity of every vehicle owner. The prosecutor shall also determine if there are any lienholders noted on the vehicle's certificate of title. The State shall~~ notify the defendant, each motor vehicle owner, and each lienholder that the motor vehicle may be subject to forfeiture and that the defendant, motor vehicle owner, or the lienholder may intervene to protect that person's interest. The notice may be served by any means reasonably likely to provide actual notice, and shall be served at least ~~fourteen~~ 10 days before the hearing at which an order of forfeiture may be entered.

(c1) Motor Vehicles Involved in Accidents. -- If a motor vehicle subject to forfeiture was damaged while the defendant operator was committing the underlying offense involving impaired driving, or was damaged incident to the seizure of the motor vehicle, the Division shall determine the name of any insurance companies that are the insurers of record with the Division for the motor vehicle at the time of the seizure or that may otherwise be liable for repair to the motor vehicle. In any case where a seized motor vehicle was involved in an accident, the Division shall notify the insurance companies that the claim for insurance proceeds for damage to the seized motor vehicle shall be paid to the clerk of superior court of the county where the motor vehicle driver was charged to be held and disbursed pursuant to further orders of the court. Any insurance company that receives written or other actual notice of seizure pursuant to this section shall not be relieved of any legal obligation under any contract of insurance unless the claim for property damage to the seized motor vehicle minus the policy owner's deductible is paid directly to the clerk of court. The insurance company paying insurance proceeds to the clerk of court pursuant

to this section shall be immune from suit by the motor vehicle owner for any damages alleged to have occurred as a result of the motor vehicle seizure. The proceeds shall be held by the clerk. The clerk shall disburse the insurance proceeds pursuant to further orders of the court.

(d) ~~Duty of Judge.~~ Forfeiture Hearing. -- The trial judge Unless a motor vehicle that has been seized pursuant to G.S. 20-28.3 has been permanently released to an innocent owner pursuant to G.S. 20-28.3(e1), a defendant owner pursuant to G.S. 20-28.3(e2), or to a lienholder pursuant to G.S. 20-28.3(e3), the court shall conduct a hearing on the forfeiture of the motor vehicle. The hearing may be held at the sentencing hearing on the operator's charge of violating G.S. 20-138.1 or G.S. 20-138.5 shall determine if the vehicle is subject to forfeiture under this section, underlying offense involving impaired driving, at a separate hearing after conviction of the defendant, or at a separate forfeiture hearing held not less than 60 days after the defendant failed to appear at the scheduled trial for the underlying offense and the defendant's order of arrest for failing to appear has not been set aside. If at the sentencing hearing, or at a subsequent forfeiture hearing, the judge determines that the requirements of subsections (a) through (c) of this section exist and the defendant was the only motor vehicle owner at the time of the offense, motor vehicle is subject to forfeiture pursuant to this section and proper notice of the hearing has been given, the judge shall order the motor vehicle forfeited. If at the sentencing hearing or at a subsequent forfeiture hearing, the judge determines that the requirements of subsections (a) through (c) of this section exist and the defendant was not the only vehicle owner at the time of the offense, motor vehicle is subject to forfeiture pursuant to this section and proper notice of the hearing has been given, the judge shall order the motor vehicle forfeited unless another motor vehicle owner establishes, by the greater weight of the evidence, that such motor vehicle owner is an innocent party owner as defined by subdivision (a1)(2) of in this section, in which case the trial judge shall order the motor vehicle released to the innocent party vehicle owner pursuant to the provisions of subsection (e) of this section. In any case where the motor vehicle is ordered forfeited, the judge shall either:

- (1) a. Authorize the school board to sell sale of the motor vehicle at public sale or allow the county board of education to retain the motor vehicle for its own use pursuant to G.S. 20-28.5; or
- (2) b. Release Order the motor vehicle released to an intervening a lienholder pursuant to the provisions of subsection (g) (f) of this section- section; and
- (2) a. Order any proceeds of sale or insurance proceeds held by the clerk of court to be disbursed to the county board of education; and
- b. Order any outstanding insurance claims be assigned to the county board of education in the event the motor vehicle has been damaged in an accident incident to the seizure of the motor vehicle.

If the judge determines that the ~~requirements of subsection (a) and (b) of this section exist~~ motor vehicle is subject to forfeiture pursuant to this section, but that notice as required by subsection (c) has not been given, the judge shall continue the forfeiture proceeding until adequate notice has been given. In no circumstance shall the sentencing of the defendant be delayed as a result of the failure of the prosecutor to give adequate notice.

(e) ~~Return~~ Release of Vehicle to Innocent Motor Vehicle Owner. -- If At a forfeiture hearing, if a nondefendant motor vehicle owner establishes by the greater weight of the evidence that: (i) the motor vehicle was being driven by a person who was not the only motor vehicle owner or had no ownership interest in the motor vehicle at the time of the underlying offense and (ii) ~~that the petitioner is an "innocent party", 'innocent owner', as defined by this section,~~ a judge shall order the motor vehicle ~~returned released to the that owner.~~ owner, conditioned upon payment of all towing and storage charges incurred as a result of the seizure and impoundment of the motor vehicle.

~~This release~~ Release to an innocent owner shall only be ordered upon satisfactory proof of:

- (1) The identity of the person as a motor vehicle owner;
- (2) The existence of financial responsibility to the extent required by Article 13 of this Chapter; and
- (3) ~~The payment of towing and storage fees; fees, except in the case of release to an innocent vehicle owner; and~~
- (4) The execution of an acknowledgment as defined in subdivision (a)(1) of this section.

If the nondefendant owner is a lessor, the release shall also be conditioned upon the lessor agreeing not to sell, give, or otherwise transfer possession of the forfeited motor vehicle to the defendant or any person acting on the defendant's behalf. A lessor who refuses to sell, give, or transfer possession of a seized motor vehicle to the defendant or any person acting on the behalf of the defendant shall not be liable for damages arising out of the refusal.

No motor vehicle subject to forfeiture under this section shall be released to a nondefendant motor vehicle owner if the records of the Division indicate the motor vehicle owner had previously signed an acknowledgment, as required by this section, and the same person was operating the motor vehicle while that person's license was revoked unless the innocent vehicle owner shows by the greater weight of the evidence that the motor vehicle owner has taken all reasonable precautions to prevent the use of the motor vehicle by this particular person and immediately reports, upon discovery, any unauthorized use to the appropriate law enforcement agency. A determination by the court at the forfeiture hearing held pursuant to subsection (d) of this section that the petitioner is not an innocent owner is a final judgment and is immediately appealable to the Court of Appeals.

(f) Release to Lienholder. -- ~~The~~ At a forfeiture hearing, the trial judge shall order a forfeited motor vehicle released to the lienholder upon payment of all towing and storage charges incurred as a result of the seizure of the motor vehicle if the judge determines, by the greater weight of the evidence, that:

- (1) The lienholder's interest is equal to or greater than the fair market value of the vehicle; has been perfected and appears on the title to the forfeited vehicle;
- (2) The lienholder agrees not to sell, give, or otherwise transfer possession of the forfeited motor vehicle to the defendant or to the motor vehicle owner who owned the motor vehicle immediately prior to forfeiture, or any person acting on the defendant's or motor vehicle owner's behalf;
- (3) The forfeited motor vehicle had not previously been released to the lienholder; and lienholder;
- (4) The lienholder pays, in full, any towing and storage costs incurred as a result of the seizure of the vehicle. The owner is in default under the terms of the security instrument evidencing the interest of the lienholder and as a consequence of the default the lienholder is entitled to possession of the motor vehicle; and
- (5) The lienholder agrees to sell the motor vehicle in accordance with the terms of its agreement and pursuant to the provisions of Part 5 of Article 9 of Chapter 25 of the General Statutes. Upon the sale of the motor vehicle, the lienholder will pay to the clerk of court of the county in which the vehicle was forfeited all proceeds from the sale, less the amount of the lien in favor of the lienholder, and any towing and storage costs paid by the lienholder.

A lienholder who refuses to sell, give, or transfer possession of a forfeited motor vehicle to the defendant, the vehicle owner who owned the motor vehicle immediately prior to forfeiture, or any person acting on the behalf of the defendant or motor vehicle owner shall not be liable for damages arising out of such refusal. The defendant, the motor vehicle owner who owned the motor vehicle immediately prior to forfeiture, and any person acting on the defendant's or motor vehicle owner's behalf are prohibited from purchasing the motor vehicle at any sale conducted by the lienholder.

(g) Possessory Lien. -- The entity that tows or stores the motor vehicle, other than the county school board, shall be entitled to a possessory lien as defined in G.S. 28.2(a)(5)."

Section 3. G.S. 20-28.3 reads as rewritten:

"§ 20-28.3. Seizure, impoundment, forfeiture of motor vehicles for offenses involving impaired driving while license revoked.

(a) ~~{Vehicles Subject to Seizure.}~~ Motor Vehicles Subject to Seizure. -- A motor vehicle that is driven by a person in violation of G.S. 20-138.1 or G.S. 20-138.5 who is charged with an offense involving impaired driving is subject to seizure if at the time of the violation the drivers license of the person driving the motor vehicle was revoked as a result of a prior impaired driving license revocation as defined in G.S. 20-28.2(a).

(b) Duty of Officer. -- If the charging officer has probable cause to believe that a motor vehicle driven by the defendant may be subject to forfeiture under this section, the officer shall seize the motor vehicle and have it impounded. If the officer determines prior to seizure that the motor vehicle had been reported stolen, the officer shall not seize the motor vehicle pursuant to this section. If the officer determines prior to seizure that the

motor vehicle was a rental vehicle driven by a person not listed as an authorized driver on the rental contract, the officer shall not seize the motor vehicle pursuant to this section, but shall make a reasonable effort to notify the owner of the rental vehicle that the vehicle was stopped and that the driver of the vehicle was not listed as an authorized driver on the rental contract. Probable cause may be based on the officer's personal knowledge, reliable information conveyed by another officer, records of the Division, or other reliable source. ~~The officer shall cause to be issued written notification of impoundment to any vehicle owner who was not operating or present in the vehicle at the time of the offense. This notice shall be sent by first-class mail to the most recent address contained in the Division records. This written notification shall inform the vehicle owner(s) that the vehicle has been impounded, shall state the reason for the impoundment and the procedure for requesting release of the vehicle.~~ The seizing officer shall notify the Division executive agency designated under subsection (b1) of this section as soon as practical but no later than 72 hours after seizure of the motor vehicle of the seizure in accordance with procedures established by the Division, executive agency designated under subsection (b1) of this section. Within 72 hours of the seizure of the vehicle the officer shall also cause notice of the impoundment and intent to forfeit the vehicle to be given to any lienholder of record with the Division.

(b1) Notification of Impoundment. -- Within 48 hours of receipt of the notice of seizure, an executive agency designated by the Governor shall issue written notification of impoundment to the Division, to any lienholder of record and to any motor vehicle owner who was not operating the motor vehicle at the time of the offense. This notice shall be sent by first-class mail to the most recent address contained in the Division's records. If the motor vehicle is registered in another state, notice shall be sent to the address shown on the records of the state where the motor vehicle is registered. This written notification shall provide notice that the motor vehicle has been seized, state the reason for the seizure and the procedure for requesting release of the motor vehicle. Additionally, if the motor vehicle was damaged while the defendant operator was committing an offense involving impaired driving or incident to the seizure, the agency shall issue written notification of the seizure to the owner's insurance company of record and to any other insurance companies that may be insuring other motor vehicles involved in the accident. The Division shall prohibit title to a seized motor vehicle from being transferred by a motor vehicle owner unless authorized by court order.

(c) Review by Magistrate. -- Upon ~~seizing~~ determining that there is probable cause for seizing a motor vehicle, the seizing officer shall present to a magistrate within the county where the ~~vehicle was seized~~ driver was charged an affidavit of impoundment setting forth the basis upon which the motor vehicle has been or will be seized for forfeiture. The magistrate shall review the affidavit of impoundment and if the magistrate determines the requirements of this section have been met, shall order the motor vehicle held. The magistrate may request additional information and may hear from the ~~operator~~ defendant if the ~~operator~~ defendant is present. If the magistrate determines the requirements of this section have not been met, the

magistrate shall order the motor vehicle released to a motor vehicle owner upon payment of towing and storage fees. If the motor vehicle has not yet been seized, and the magistrate determines that seizure is appropriate, the magistrate shall issue an order of seizure of the motor vehicle. The magistrate shall provide a copy of the order of seizure to the clerk of court. The clerk shall provide copies of the order of seizure to the district attorney and the attorney for the county board of education.

(c1) Effecting an Order of Seizure. -- An order of seizure shall be valid anywhere in the State. Any officer with territorial jurisdiction and who has subject matter jurisdiction for violations of this Chapter may use such force as may be reasonable to seize the motor vehicle and to enter upon the property of the defendant to accomplish the seizure. An officer who has probable cause to believe the motor vehicle is concealed or stored on private property of a person other than the defendant may obtain a search warrant to enter upon that property for the purpose of seizing the motor vehicle.

(d) Custody of Motor Vehicle. -- The Unless the motor vehicle is towed pursuant to a statewide or regional contract, or a contract with the county board of education, the seized motor vehicle shall be towed by a commercial towing company designated by the law enforcement agency that seized the motor vehicle. to a location designated by the county school board for the county in which the operator of the vehicle is charged and Seized motor vehicles not towed pursuant to a statewide or regional contract or a contract with a county board of education shall be retrieved from the commercial towing company within a reasonable time, not to exceed 10 days, by the county board of education or their agent who must pay towing and storage fees to the commercial towing company when the motor vehicle is retrieved. If either a statewide or regional contractor, or the county board of education, chooses to contract for local towing services, all towing companies on the towing list for each law enforcement agency with jurisdiction within the county shall be given written notice and an opportunity to submit proposals prior to a contract for local towing services being awarded. The seized motor vehicle is placed under the constructive possession of the school board county board of education for the county in which the operator of the vehicle is charged at the time the vehicle is delivered to a location designated by the county board of education or delivered to its agent pending release or sale. sale, or in the event a statewide or regional contract is in place, under the constructive possession of the Department of Public Instruction, on behalf of the State at the time the vehicle is delivered to a location designated by the Department of Public Instruction or delivered to its agent pending release or sale. Each Absent a statewide or regional contract that provides otherwise, each county school board board of education may elect to have seized motor vehicles stored on property owned or leased by the school county board of education and charge no a reasonable fee for storage. storage, not to exceed ten dollars (\$10.00) per day. In the alternative, the county school board board of education may contract with a commercial towing and storage facility or other private entity for the storage towing, storage, and disposal of seized motor vehicles, and a storage fee of not more than five ten dollars (\$5.00) (\$10.00) per day may be charged. Except for gross negligence or

intentional misconduct, the county board of education, or any of its employees, shall not be liable to the owner or lienholder for damage to or loss of the motor vehicle or its contents, or to the owner of personal property in a seized vehicle, during the time the motor vehicle is being towed or stored pursuant to this subsection.

(e) Release of Motor Vehicle Pending Trial. -- A motor vehicle owner, or a lienholder of a vehicle, other than the driver at the time of the underlying offense resulting in the seizure, may apply to the clerk of superior court in the county where the charges are pending for pretrial release of the motor vehicle.

The clerk shall release the motor vehicle to a qualified nondefendant motor vehicle owner or a lienholder conditioned upon payment of all towing and storage charges incurred as a result of seizure and impoundment of the motor vehicle under the following conditions:

- (1) The motor vehicle has been stored seized for not less than 24 hours;
- ~~(2) All towing and storage charges have been paid;~~
- (3) Execution of a good and valid bond with sufficient sureties in an amount equal to twice the value of the seized vehicle, as determined in accordance with the schedule of values adopted by the Commissioner of Motor Vehicles pursuant to G.S. 105-187.3, A bond in an amount equal to the fair market value of the motor vehicle as defined by G.S. 20-28.2 has been executed and is secured by a cash deposit in the full amount of the bond, by a recordable deed of trust to real property in the full amount of the bond, by a bail bond under G.S. 58-71-1(2), or by at least one solvent surety, payable to the county school fund and conditioned on return of the motor vehicle, in substantially the same condition as it was at the time of seizure and without any new or additional liens or encumbrances, on the day of trial of the operator; any hearing scheduled and noticed by the district attorney under G.S. 20-28.2(c), unless the motor vehicle has been permanently released;
- (4) If a qualified vehicle owner, execution Execution of an acknowledgment as described in G.S. 20-28.2(a1); and
- (5) A check of the records of the Division indicates that the requesting motor vehicle owner has not previously executed an acknowledgment naming the operator of the seized vehicle, motor vehicle; and
- (6) A bond posted to secure the release of this motor vehicle under this subsection has not been previously ordered forfeited under G.S. 20-28.5.

In the event a nondefendant motor vehicle owner who obtains temporary possession of a seized motor vehicle pursuant to this subsection does not return the motor vehicle on the day of the forfeiture hearing as noticed by the district attorney under G.S. 20-28.3(c) or otherwise violates a condition of pretrial release of the seized motor vehicle as set forth in this subsection, the bond posted shall be ordered forfeited and an order of seizure shall be issued by the court. Additionally, a nondefendant motor vehicle owner or

lienholder who willfully violates any condition of pretrial release may be held in civil or criminal contempt.

(e1) Pretrial Release of Motor Vehicle to Innocent Owner. -- A nondefendant motor vehicle owner may file a petition with the clerk of court seeking a pretrial determination that the petitioner is an innocent owner. The clerk shall schedule a hearing before a judge to be held within 10 business days or as soon as thereafter may be feasible. Notice of the hearing shall be given to the petitioner, the district attorney, and the attorney for the county board of education. The clerk shall forward a copy of the petition to the district attorney for the district attorney's review. If, based on available information, the district attorney determines that the petitioner is an innocent owner and that the motor vehicle is not subject to forfeiture, the district attorney may note the State's consent to the release of the motor vehicle on the petition and return the petition to the clerk of court who shall enter an order releasing the motor vehicle to the petitioner subject to the conditions of release as set forth in G.S. 20-28.2(e) and no hearing shall be held. The clerk shall send a copy of the order of release to the county board of education attorney. At any pretrial hearing conducted pursuant to this subsection, the court is not required to determine the issue of forfeiture, only the issue of whether the petitioner is an innocent owner. Accordingly, the State shall not be required to prove the underlying offense of impaired driving or the existence of a prior drivers license revocation. If the court determines that the petitioner is an innocent owner, the court shall release the motor vehicle to the petitioner subject to the same conditions as if the petitioner were an innocent owner under G.S. 20-28.2(e). An order issued under this subsection finding that the petitioner failed to establish that the petitioner is an innocent owner may be reconsidered by the court as part of the forfeiture hearing conducted pursuant to G.S. 20-28.2(d).

(e2) Pretrial Release of Motor Vehicle to Defendant Owner. -- A defendant motor vehicle owner may file a petition with the clerk of court seeking a pretrial determination that the defendant's license was not revoked pursuant to an impaired driving license revocation as defined in G.S. 20-28.2(a). The clerk shall schedule a hearing before a judge of the division in which the underlying criminal charge is pending for a hearing to be held within 10 business days or as soon thereafter as may be feasible. Notice of the hearing shall be given to the defendant, the district attorney, and the attorney for the county board of education. The clerk shall forward a copy of the petition to the district attorney for the district attorney's review. If, based on available information, the district attorney determines that the defendant's motor vehicle is not subject to forfeiture, the district attorney may note the State's consent to the release of the motor vehicle on the petition and return the petition to the clerk of court who shall enter an order releasing the motor vehicle to the defendant upon payment of all towing and storage charges incurred as a result of the seizure and impoundment of the motor vehicle, subject to the satisfactory proof of the identity of the defendant as a motor vehicle owner and the existence of financial responsibility to the extent required by Article 13 of this Chapter, and no hearing shall be held. The clerk shall send a copy of the order of release to the attorney for the county board of education. At any pretrial hearing

conducted pursuant to this subsection, the court is not required to determine the issue of the underlying offense of impaired driving only the existence of a prior drivers license revocation as an impaired driving license revocation. Accordingly, the State shall not be required to prove the underlying offense of impaired driving. An order issued under this subsection finding that the defendant failed to establish that the defendant's license was not revoked pursuant to an impaired driving license revocation as defined in G.S. 20-28.2(a) may be reconsidered by the court as part of the forfeiture hearing conducted pursuant to G.S. 20-28.2(d).

(e3) Pretrial Release of Motor Vehicle to Lienholder. -- A lienholder may file a petition with the clerk of court requesting the court to order pretrial release of a seized motor vehicle. The lienholder shall serve a copy of the petition on all interested parties which shall include the registered owner, the titled owner, the district attorney, and the county board of education attorney. Upon 10 days' prior notice of the date, time, and location of the hearing sent by the lienholder to all interested parties, a judge, after a hearing, shall order a seized motor vehicle released to the lienholder conditioned upon payment of all towing and storage costs incurred as a result of the seizure and impoundment of the motor vehicle if the judge determines, by the greater weight of the evidence, that:

- (1) Default on the obligation secured by the motor vehicle has occurred;
- (2) As a consequence of default, the lienholder is entitled to possession of the motor vehicle;
- (3) The lienholder agrees to sell the motor vehicle in accordance with the terms of its agreement and pursuant to the provisions of Part 5 of Article 9 of Chapter 25 of the General Statutes. Upon sale of the motor vehicle, the lienholder will pay to the clerk of court of the county in which the driver was charged all proceeds from the sale, less the amount of the lien in favor of the lienholder, and any towing and storage costs paid by the lienholder;
- (4) The lienholder agrees not to sell, give, or otherwise transfer possession of the seized motor vehicle while the motor vehicle is subject to forfeiture, or the forfeited motor vehicle after the forfeiture hearing, to the defendant or the motor vehicle owner; and
- (5) The seized motor vehicle while the motor vehicle is subject to forfeiture, or the forfeited motor vehicle after the forfeiture hearing, had not previously been released to the lienholder as a result of a prior seizure involving the same defendant or motor vehicle owner.

The clerk of superior court may order a seized vehicle released to the lienholder conditioned upon payment of all towing and storage costs incurred as a result of the seizure and impoundment of the motor vehicle at any time when all interested parties have, in writing, waived any rights that they may have to notice and a hearing, and the lienholder has agreed to the provision of subdivision (4) above. A lienholder who refuses to sell, give, or transfer possession of a seized motor vehicle while the motor vehicle is subject to forfeiture, or a forfeited motor vehicle after the forfeiture hearing, to:

- (1) The defendant;
- (2) The motor vehicle owner who owned the motor vehicle immediately prior to seizure pending the forfeiture hearing, or to forfeiture after the forfeiture hearing; or
- (3) Any person acting on the behalf of the defendant or the motor vehicle owner,

shall not be liable for damages arising out of such refusal. However, any subsequent violation of the conditions of release by the lienholder shall be punishable by civil or criminal contempt.

~~(f) Duty of Trial Judge. -- The trial judge at the sentencing hearing on the operator's charge of violating G.S. 20-138.1 or G.S. 20-138.5 shall determine if the vehicle is subject to forfeiture pursuant to the provisions of G.S. 20-28.2.~~

~~(g) Possessory Lien. -- The entity that tows and stores the vehicle, other than the county school board, shall be entitled to a possessory lien as defined in G.S. 28.2(a1)(5).~~

(h) Insurance Proceeds. -- In the event a motor vehicle is damaged incident to the conduct of the defendant which gave rise to the defendant's arrest and seizure of the motor vehicle pursuant to this section, the county board of education, or its authorized designee, is authorized to negotiate the county board of education's interest with the insurance company and to compromise and accept settlement of any claim for damages. Property insurance proceeds accruing to the defendant, or other owner of the seized motor vehicle, shall be paid by the responsible insurance company directly to the clerk of superior court in the county where the motor vehicle driver was charged. If the motor vehicle is declared a total loss by the insurance company responsible for the motor vehicle, the clerk of superior court, upon application of the county board of education, shall enter an order that the motor vehicle be released to the insurance company upon payment into the court of all insurance proceeds for damage to the motor vehicle after payment of towing and storage costs and all valid liens. The clerk of superior court shall provide the Division with a certified copy of the order entered pursuant to this subsection, and the Division shall transfer title to the insurance company or to such other person or entity as may be designated by the insurance company. Insurance proceeds paid to the clerk of court pursuant to this subsection shall be subject to forfeiture pursuant to G.S. 20-28.5 and shall be disbursed pursuant to further orders of the court. An affected motor vehicle owner or lienholder who objects to any agreed upon settlement under this subsection may file an independent claim with the insurance company for any additional monies believed owed. Notwithstanding any other provisions in this Chapter, nothing in this section or G.S. 20-28.2 shall require an insurance company to make payments in excess of those required pursuant to its policy of insurance on the seized motor vehicle.

(i) Expedited Sale of Seized Motor Vehicles in Certain Cases. -- In order to avoid additional liability for towing and storage costs pending resolution of the criminal proceedings of the defendant, the county board of education may, after expiration of 90 days from the date of seizure, sell any motor vehicle having a fair market value of one thousand five hundred dollars

(\$1,500) or less. The county board of education may also sell a motor vehicle, regardless of the fair market value, any time the towing and storage costs exceed eighty-five percent (85%) of the fair market value of the vehicle, or with the consent of all the motor vehicle owners. Any sale conducted pursuant to this subsection shall take place upon not less than 10 days' prior notice to the motor vehicle owners and lienholders, and the proceeds of the sale, after the payment of outstanding towing and storage costs, shall be deposited with the clerk of superior court. If an order of forfeiture is entered by the court, the court shall order the proceeds held by the clerk to be disbursed as provided in G.S. 20-28.5(b). If the court determines that the motor vehicle is not subject to forfeiture, the court shall order the proceeds held by the clerk to be disbursed first to pay the sale, towing, and storage costs, second to pay outstanding liens on the motor vehicle, and the balance to be paid to the motor vehicle owners.

(j) Retrieval of Certain Personal Property. -- At reasonable times, the entity charged with storing the motor vehicle may permit owners of personal property not affixed to the motor vehicle to retrieve those items from the motor vehicle, provided satisfactory proof of ownership of the motor vehicle or the items of personal property is presented to the storing entity.

(k) County Board of Education Right to Appear and Participate in Proceedings. -- The attorney for the county board of education shall be given notice of all proceedings regarding offenses involving impaired driving related to a motor vehicle subject to forfeiture. The attorney for the county board of education shall also have the right to appear and to be heard on all issues relating to the seizure, possession, release, forfeiture, sale, and other matters related to the seized vehicle under this section. With the prior consent of the county board of education, the district attorney may delegate to the attorney for the county board of education any or all of the duties of the district attorney under this section. Clerks of superior court, law enforcement agencies, and all other agencies with information relevant to the seizure, impoundment, release, or forfeiture of motor vehicles are authorized and directed to provide county boards of education with access to that information and to do so by electronic means when existing technology makes this type of transmission possible.

(l) Payment of Fees Upon Conviction. -- If the driver of a motor vehicle seized pursuant to this section is convicted of an offense involving impaired driving, the defendant shall be ordered to pay as restitution to the county board of education, the motor vehicle owner, or the lienholder the cost paid or owing for the towing, storage, and sale of the motor vehicle to the extent the costs were not covered by the proceeds from the forfeiture and sale of the motor vehicle. In addition, a civil judgment for the costs under this section in favor of the party to whom the restitution is owed shall be docketed by the clerk of superior court. If the defendant is sentenced to an active term of imprisonment, the civil judgment shall become effective and be docketed when the defendant's conviction becomes final. If the defendant is placed on probation, the civil judgment in the amount found by a judge during the probation revocation or termination hearing to be due shall become effective and be docketed by the clerk when the defendant's probation is revoked or terminated.

(m) Trial Priority. -- District court trials of impaired driving offenses involving forfeitures of motor vehicles pursuant to G.S. 20-28.2 shall be scheduled on the arresting officer's next court date or within 30 days of the offense, whichever comes first.

Once scheduled, the case shall not be continued unless all of the following conditions are met:

- (1) A written motion for continuance is filed with notice given to the opposing party prior to the motion being heard.
- (2) The judge makes a finding of a 'compelling reason' for the continuance.
- (3) The motion and finding are attached to the court case record.

Upon a determination of guilt, the issue of vehicle forfeiture shall be heard by the judge immediately, or as soon thereafter as feasible, and the judge shall issue the appropriate orders pursuant to G.S. 20-28.2(d).

Should a defendant appeal the conviction to superior court, any party may file a motion for review to consider whether the motor vehicle may be released pursuant to G.S. 20-28.2(e) or (f) or G.S. 20-28.3(e), (e1), or (e3)."

Section 4. G.S. 20-28.4 reads as rewritten:

"§ 20-28.4. Release of impounded motor vehicles by judge.

(a) Release to Innocent Vehicle Owner. -- A vehicle owner who was not the operator of the vehicle at the time of the offense may petition the court for return of the vehicle pursuant to the provisions of G.S. 20-28.2(e).

(b) Acknowledgment Required. -- The vehicle owner seeking release under this section or pretrial release under G.S. 20-28.3 shall sign an acknowledgment as described in G.S. 20-28.2(a1)(1).

(c) Release to Lienholder. -- A district court judge may order a forfeited vehicle released to a lienholder if the judge determines, by the greater weight of the evidence, that the lienholder satisfies the criteria as set out in G.S. 20-28.2(f).

(d) Release Upon Conclusion of Trial. -- If the driver of a motor vehicle seized pursuant to G.S. 20-28.3:

- (1) Is subsequently not convicted of either G.S. 20-138.1 or G.S. 20-138.5 an offense involving impaired driving due to dismissal or a finding of not guilty; or
- (2) The judge at the sentencing hearing fails to find the grossly aggravating factor described in G.S. 20-179(c)(2), a forfeiture hearing conducted pursuant to G.S. 20-28.2(d) fails to find that the drivers license was revoked as a result of a prior impaired driving license revocation as defined in G.S. 20-28.2; and
- (3) The vehicle has not previously been released to a lienholder pursuant to G.S. 20-28.3(e3),

the seized motor vehicle or insurance proceeds held by the clerk of court pursuant to G.S. 20-28.2(c1) or G.S. 20-28.3(h) shall be returned released to the motor vehicle owner, owner conditioned upon payment of towing and storage costs. Notwithstanding G.S. 44A-2(d), if the owner of the seized motor vehicle does not obtain release of the vehicle within 30 days from the date of the court's order, the possessor of the seized motor vehicle has a mechanics' lien on the seized motor vehicle for the full amount of the

towing and storage charges incurred since the motor vehicle was seized and may dispose of the seized motor vehicle pursuant to Article 1 of Chapter 44A of the General Statutes.

~~If the court finds that probable cause did not exist to seize the motor vehicle, the court shall order the vehicle released.~~

~~A determination which results in the return or release of the seized vehicle under this section authorizes the driver, vehicle owner, or lienholder to recover towing or storage fees paid in order to obtain pretrial release of the motor vehicle. Towing or storage fees recovered pursuant to this subsection shall be paid by the county school board from forfeitures paid into the county school fund."~~

Section 5. G.S. 20-28.5 reads as rewritten:

"§ 20-28.5. Forfeiture of impounded vehicle, motor vehicle or funds.

(a) ~~Sale. -- Unless a judge orders the vehicle returned to an innocent party or a lienholder pursuant to G.S. 20-28.2 or G.S. 20-28.4, the vehicle shall be ordered forfeited and sold or transferred to the school board in the county where the charges were filed. The sale of the vehicle shall be a judicial~~ A motor vehicle ordered forfeited and sold shall be sold at a public sale conducted in accordance with the provisions of Parts 1 and 2 of Article 29A of Chapter 1 Article 12 of Chapter 160A of the General Statutes Statutes, applicable to sales authorized pursuant to G.S. 160A-266(a)(2), (3), or (4), subject to the notice requirements of this subsection, and shall be conducted by the county school board board of education or a person acting on its behalf. In addition to the notice requirements of Part 2 of Article 29A of Chapter 1 of the General Statutes, notice of sale Notice of sale, including the date, time, location, and manner of sale, shall also be given by certified mail, return receipt requested, first-class mail to all motor vehicle owners of the vehicle to be sold at the address shown by the Division's records of the Division and at any other address of the motor vehicle owner as may be found in the criminal file in which the forfeiture was ordered. Notice Written notice of sale shall also be by certified mail, return receipt requested, given to all lienholders on file with the Division. Notice of sale shall be given to the Division in accordance with the procedures established by the Division. Notices required to be given under this subsection shall be mailed at least 14 days prior to the date of sale. A lienholder shall be permitted to purchase the motor vehicle at any such sale by bidding in the amount of its lien, if that should be the highest bid, without being required to tender any additional funds, other than the towing and storage fees. The county board of education, or its agent, shall not sell, give, or otherwise transfer possession of the forfeited motor vehicle to the defendant, the motor vehicle owner who owned the motor vehicle immediately prior to forfeiture, or any person acting on the defendant's or motor vehicle owner's behalf.

(b) ~~Proceeds of Sale. -- Proceeds of any sale conducted under this section section, G.S. 20-28.2(f)(5), or G.S. 20-28.3(e3)(3), shall first be applied to the cost of sale and then to satisfy towing and storage liens and the cost of sale, costs. The balance of the proceeds of sale, if any, shall be used to satisfy any other existing liens of record that were properly recorded with the Division prior to the date of initial seizure of the vehicle. Any~~

remaining balance shall be paid to the county school fund in the county in which the motor vehicle was ordered forfeited. If there is more than one school board in the county, then the net proceeds of sale, after reimbursement to the county board of education of reasonable administrative costs incurred in connection with the forfeiture and sale of the motor vehicle, shall be distributed in the same manner as fines and other forfeitures. ~~Vehicles sold~~ The sale of a motor vehicle pursuant to this section shall be deemed to extinguish all existing liens on the motor vehicle and the motor vehicle shall be transferred free and clear of any liens.

(c) Retention of Motor Vehicle. -- ~~The county~~ A board of education may, at its option, retain any forfeited motor vehicle for its ~~use~~, use upon payment of towing and storage costs. If the motor vehicle is retained, any valid lien of record at the time of the initial seizure of the motor vehicle shall be satisfied by the ~~school board~~ county board of education relieving the motor vehicle owner of all liability for the obligation secured by the motor vehicle. If there is more than one school board in the county, and the motor vehicle is retained by a board of education, then the fair market value of the motor vehicle, less the costs for towing, storage, reasonable administrative costs, and liens paid, shall be used to determine and pay the share due each of the school boards in the same manner as fines and other forfeitures.

~~(d) [Counties with Multiple School Boards.] -- If there is more than one school board in the county, then the fair market value of the vehicle shall be used to determine the share due each of the school boards in the same manner as fines and other forfeitures.~~

(e) Order of Forfeiture; Appeals. -- An order of forfeiture is stayed pending appeal of a conviction for an offense that is the basis for the order. When the conviction of an offense that is the basis for an order of forfeiture is appealed from district court, the issue of forfeiture shall be heard in superior court de novo. Appeal from a final order of forfeiture shall be to the Court of Appeals."

Section 6. G.S. 20-28.6 is repealed.

Section 7. G.S. 20-28.7 reads as rewritten:

"§ 20-28.7. *Responsibility of Division of Motor Vehicles.*

The Division shall establish procedures by rule to provide for the orderly seizure, forfeiture, sale, and transfer of motor vehicles pursuant to the provisions of G.S. 20-28.2, 20-28.3, 20-28.4, ~~20-28.5, and 20-28.6,~~ and 20-28.5."

Section 8. Article 2 of Chapter 20 of the General Statutes is amended by adding two new sections to read:

"§ 20-28.8. *Reports to the Division.*

In any case in which a vehicle has been seized pursuant to G.S. 20-28.3, in addition to any other information that must be reported pursuant to this Chapter, the clerk of superior court shall report to the Division by electronic means the execution of an acknowledgment as defined in G.S. 20-28.2(a1)(1), the entry of an order of forfeiture as defined in G.S. 20-28.2(a1)(4), and the entry of an order of release as defined in G.S. 20-28.3 and G.S. 20-28.4. Each report shall include any of the following information that has not previously been reported to the Division in the case: the name, address, and drivers license number of the defendant; the name,

address, and drivers license number of the nondefendant motor vehicle owner, if known; and the make, model, year, vehicle identification number, state of registration, and vehicle registration plate number of the seized vehicle, if known.

"§ 20-28.9. Authority for the Department of Public Instruction to administer a statewide or regional towing, storage, and sales program for driving while impaired vehicles forfeited.

(a) The Department of Public Instruction is authorized to enter into a contract for a statewide service or contracts for regional services to tow, store, process, maintain, and sell motor vehicles seized pursuant to G.S. 20-28.3. All motor vehicles seized under G.S. 20-28.3 shall be subject to contracts entered into pursuant to this section. Contracts shall be let by the Department of Public Instruction in accordance with the provisions of Article 3 of Chapter 143 of the General Statutes. All contracts shall ensure the safety of the motor vehicles while held and any funds arising from the sale of any seized motor vehicle. The contract shall require the contractor to maintain and make available to the agency a computerized up-to-date inventory of all motor vehicles held under the contract, together with an accounting of all accrued charges, the status of the vehicle, and the county school fund to which the proceeds of sale are to be paid. The contract shall provide that the contractor shall pay the towing and storage charges owed on a seized vehicle to a commercial towing company at the time the seized vehicle is obtained from the commercial towing company, with the contractor being reimbursed this expense when the vehicle is released or sold. The Department shall not enter into any contract under this section under which the State will be obligated to pay a deficiency arising from the sale of any forfeited motor vehicle.

(b) The Department, through its contractor or contractors designated in accordance with subsection (a) of this section, may charge a reasonable fee for storage not to exceed ten dollars (\$10.00) per day for the storage of seized vehicles pursuant to G.S. 20-28.3.

(c) In order to help defray the administrative costs associated with the administration of this section, the Department shall collect a ten dollar (\$10.00) administrative fee from a person to whom a seized vehicle is released at the time the motor vehicle is released and shall collect a ten dollar (\$10.00) administrative fee out of the proceeds of the sale of any forfeited motor vehicle. The funds collected under this subsection shall be paid to the General Fund."

Section 9. G.S. 20-54 reads as rewritten:

"§ 20-54. Authority for refusing registration or certificate of title.

The Division shall refuse registration or issuance of a certificate of title or any transfer of registration upon any of the following grounds:

- (1) The application contains a false or fraudulent statement, the applicant has failed to furnish required information or reasonable additional information requested by the Division, or the applicant is not entitled to the issuance of a certificate of title or registration of the vehicle under this Article.
- (2) The vehicle is mechanically unfit or unsafe to be operated or moved upon the highways.

- (3) The Division has reasonable ground to believe that the vehicle is a stolen or embezzled vehicle, or that the granting of registration or the issuance of a certificate of title would constitute a fraud against the rightful owner or another person who has a valid lien against the vehicle.
- (4) The registration of the vehicle stands suspended or revoked for any reason as provided in the motor vehicle laws of this State.
- (5) The required fee has not been paid.
- (6) The vehicle is not in compliance with the emissions inspection requirements of Part 2 of Article 3A of this Chapter or a civil penalty assessed as a result of the failure of the vehicle to comply with that Part has not been paid.
- (7) The Division has been notified that the motor vehicle has been seized by a law enforcement officer and is subject to forfeiture pursuant to G.S. 20-28.2, et seq., or any other statute. However, the Division shall not prevent the renewal of existing registration prior to an order of forfeiture."

Section 10. Part 2 of Article 3 of Chapter 20 of the General Statutes is amended by adding a new section to read:

"§ 20-54.1. Forfeiture of right of registration.

(a) Upon receipt of notice of conviction of a violation of an offense involving impaired driving while the person's license is revoked as a result of a prior impaired driving license revocation as defined in G.S. 20-28.2, the Division shall revoke the registration of all motor vehicles registered in the convicted person's name and shall not register a motor vehicle in the convicted person's name until the convicted person's license is restored. Upon receipt of notice of revocation of registration from the Division, the convicted person shall surrender the registration on all motor vehicles registered in the convicted person's name to the Division within 10 days of the date of the notice.

(b) Upon receipt of a notice of conviction under subsection (a) of this section, the Division shall revoke the registration of the motor vehicle seized, and the owner shall not be allowed to register the motor vehicle seized until the convicted operator's drivers license has been restored. The Division shall not revoke the registration of the owner of the seized motor vehicle if the owner is determined to be an innocent owner. The Division shall revoke the owner's registration only after the owner is given an opportunity for a hearing to demonstrate that the owner is an innocent owner as defined in G.S. 20-28.2. Upon receipt of notice of revocation of registration from the Division, the owner shall surrender the registration on the motor vehicle seized to the Division within 10 days of the date of the notice."

Section 11. G.S. 20-55 reads as rewritten:

"§ 20-55. Examination of registration records and index of ~~stolen~~ seized, stolen, and recovered vehicles.

The Division, upon receiving application for any transfer of registration or for original registration of a vehicle, other than a new vehicle sold by a North Carolina dealer, shall first check the engine and serial numbers shown in the application with its record of registered motor vehicles, and

against the index of ~~stolen~~ seized, stolen, and recovered motor vehicles required to be maintained by this Article."

Section 12. G.S. 20-114(c) reads as rewritten:

"(c) It shall also be the duty of every ~~sheriff of every county of the State and of every police or peace officer of the State~~ law enforcement officer to make immediate report to the Commissioner of all motor vehicles reported to ~~him~~ the officer as abandoned or that are seized by ~~him~~ the officer for being used for illegal transportation of alcoholic beverages or other unlawful purposes, or seized and are subject to forfeiture pursuant to G.S. 20-28.2, et seq., or any other statute, and no motor vehicle shall be sold by any sheriff, police or peace officer, or by any person, firm or corporation claiming a mechanic's or storage lien, or under judicial proceedings, until notice on a form approved by the Commissioner shall have been given the Commissioner at least 20 days before the date of such sale."

Section 12.1. G. S. 20-166.1(h) reads as rewritten:

"(h) Forms. -- The Division must provide forms to persons required to make reports under this section and the reports must be made on the forms provided. The forms must ask for the following information about a reportable accident:

- (1) The cause of the accident.
- (2) The conditions existing at the time of the accident.
- (3) The persons and vehicles involved.
- (4) Whether the vehicle has been seized and is subject to forfeiture under G.S. 20-28.2."

Section 13. G.S. 1-339.4 reads as rewritten:

"§ 1-339.4. *Who may hold sale.*

An order of sale may authorize the persons designated below to hold the sale:

- (1) In any proceeding, a commissioner specially appointed therefor; ~~or~~
- (2) In a proceeding to sell property of a decedent, the administrator, executor or collector of such decedent's estate;
- (3) In a proceeding to sell property of a minor, the guardian of such minor's estate;
- (4) In a proceeding to sell property of an incompetent, the guardian or trustee of such incompetent's estate;
- (5) In a proceeding to sell property of an absent or missing person, the administrator, collector, conservator, or guardian of the estate of such absent or missing person;
- (6) In a proceeding to foreclose a deed of trust, the trustee named in the deed of trust;
- (7) In a receivership proceeding, the receiver;
- (8) In a proceeding to sell property of a trust, the ~~trustee~~, trustee.
- (9) ~~In a motor vehicle forfeiture proceeding pursuant to G.S. 20-28.5, the county school board or a person acting on its behalf."~~

Section 14. G.S. 44A-2(d) reads as rewritten:

- "(d) Any person who repairs, services, tows, or stores motor vehicles in the ordinary course of ~~his~~ the person's business pursuant to an express or implied contract with an owner or legal possessor of the motor ~~vehicle~~ vehicle, except for a motor vehicle seized pursuant

to G.S. 20-28.3, has a lien upon the motor vehicle for reasonable charges for such repairs, servicing, towing, storing, or for the rental of one or more substitute vehicles provided during the repair, servicing, or storage. This lien shall have priority over perfected and unperfected security interests. Payment for towing and storing a motor vehicle seized pursuant to G.S. 20-28.3 shall be as provided for in G.S. 20-28.2 through G.S. 20-28.5."

Section 15. G.S. 44A-4(b)(1) reads as rewritten:

"(b) Notice and Hearings. --

- (1) If the property upon which the lien is claimed is a motor vehicle that is required to be registered, the lienor following the expiration of the relevant time period provided by subsection (a) shall give notice to the Division of Motor Vehicles that a lien is asserted and sale is proposed and shall remit to the Division a fee of ten dollars (\$10.00). The Division of Motor Vehicles shall issue notice by registered or certified mail, return receipt requested, ~~within 15 days of receipt of notice from the lienor,~~ to the person having legal title to the property, if reasonably ascertainable, to the person with whom the lienor dealt if different, and to each secured party and other person claiming an interest in the property who is actually known to the Division or who can be reasonably ascertained. The notice shall state that a lien has been asserted against specific property and shall identify the lienor, the date that the lien arose, the general nature of the services performed and materials used or sold for which the lien is asserted, the amount of the lien, and that the lienor intends to sell the property in satisfaction of the lien. The notice shall inform the recipient that the recipient has the right to a judicial hearing at which time a determination will be made as to the validity of the lien prior to a sale taking place. The notice shall further state that the recipient has a period of 10 days from the date of receipt in which to notify the Division by registered or certified mail, return receipt requested, that a hearing is desired and that if the recipient wishes to contest the sale of his property pursuant to such lien, the recipient should notify the Division that a hearing is ~~desired and the Division shall notify lienor,~~ desired. The notice shall state the required information in simplified terms and shall contain a form whereby the recipient may notify the Division that a hearing is desired by the return of such form to the Division. The Division shall notify the lienor whether such notice is timely received by the Division. In lieu of the notice by the lienor to the Division and the notices issued by the Division described above, the lienor may issue notice on a form approved by the Division pursuant to the notice requirements above. If notice is issued by the lienor, the recipient shall return the form requesting a hearing to the lienor, and not the Division, within 10 days from the date the recipient receives the notice if a judicial hearing is requested. Failure of the recipient to notify the Division or lienor, as specified in the notice, within 10 days of the receipt of such notice that a hearing is desired shall be deemed a

waiver of the right to a hearing prior to the sale of the property against which the lien is asserted, ~~the Division shall notify the lienor,~~ and the lienor may proceed to enforce the lien by public or private sale as provided in this section and the Division shall transfer title to the property pursuant to such sale. If the Division or lienor, as specified in the notice, is notified within the 10-day period provided above that a hearing is desired prior to sale, the lien may be enforced by sale as provided in this section and the Division will transfer title only pursuant to the order of a court of competent jurisdiction.

If the ~~Division notifies the lienor that the~~ registered or certified mail notice has been returned as undeliverable, or if ~~the Division cannot ascertain~~ the name of the person having legal title to the vehicle cannot reasonably be ascertained and the fair market value of the vehicle is less than eight hundred dollars (\$800.00), the lienor may institute a special proceeding in the county where the vehicle is being held, for authorization to sell that vehicle. Market value shall be determined by the schedule of values adopted by the Commissioner under G.S. 105-187.3.

In such a proceeding a lienor may include more than one vehicle, but the proceeds of the sale of each shall be subject only to valid claims against that vehicle, and any excess proceeds of the sale shall escheat to the State and be paid immediately to the treasurer for disposition pursuant to Chapter 116B of the General Statutes. A vehicle owner or possessor claiming an interest in such proceeds shall have a right of action under G.S. 116B-38.

The application to the clerk in such a special proceeding shall contain the notice of sale information set out in subsection (f) hereof. If the application is in proper form the clerk shall enter an order authorizing the sale on a date not less than 14 days therefrom, and the lienor shall cause the application and order to be sent immediately by first-class mail pursuant to G.S. 1A-1, Rule 5, to each person to whom ~~the Division has mailed~~ was mailed pursuant to this subsection. Following the authorized sale the lienor shall file with the clerk a report in the form of an affidavit, stating that the lienor has complied with the public or private sale provisions of G.S. 44A-4, the name, address, and bid of the high bidder or person buying at a private sale, and a statement of the disposition of the sale proceeds. The clerk then shall enter an order directing the Division to transfer title accordingly.

If prior to the sale the owner or legal possessor contests the sale or lien in a writing filed with the clerk, the proceeding shall be handled in accordance with G.S. 1-399."

Section 16. G.S. 58-71-1 reads as rewritten:

"§ 58-71-1. *Definitions.*

The following words when used in this Article shall have the following meanings:

- (1) 'Accommodation bondsman' is a natural person who has reached the age of 18 years and is a bona fide resident of this State and who, aside from love and affection and release of the person concerned, receives no consideration for action as surety and who endorses the bail bond after providing satisfactory evidences of ownership, value and marketability of real or personal property to the extent necessary to reasonably satisfy the official taking bond that such real or personal property will in all respects be sufficient to assure that the full principal sum of the bond will be realized in the event of breach of the conditions thereof. 'Consideration' as used in this subdivision does not include the legal rights of a surety against a principal by reason of breach of the conditions of a bail bond nor does it include collateral furnished to and securing the surety so long as the value of the surety's rights in the collateral do not exceed the principal's liability to the surety by reason of a breach in the conditions of said bail bond.
- (2) 'Bail bond' shall mean an undertaking by the principal to appear in court as required upon penalty of forfeiting bail to the State in a stated amount; and may include an unsecured appearance bond, a premium-secured appearance bond, an appearance bond secured by a cash deposit of the full amount of the bond, an appearance bond secured by a mortgage pursuant to G.S. 58-74-5, and an appearance bond secured by at least one surety. A bail bond may also include a bond securing the return of a motor vehicle subject to forfeiture in accordance with G.S. 20-28.3(e).
- (3) 'Bail bondsman' shall mean a surety bondsman, professional bondsman or an accommodation bondsman as hereinafter defined.
- (4) 'Commissioner' shall mean the Commissioner of Insurance.
- (5) 'Insurer' shall mean any domestic, foreign, or alien surety company which has qualified generally to transact surety business and specifically to transact bail bond business in this State.
- (6) 'Obligor' shall mean a principal or a surety on a bail bond.
- (7) 'Principal' shall mean a defendant or witness obligated to appear in court as required upon penalty of forfeiting bail under a bail ~~bond~~ bond or a person obligated to return a motor vehicle subject to forfeiture in accordance with G.S. 20-28.3(e).
- (8) 'Professional bondsman' shall mean any person who is approved and licensed by the Commissioner and who pledges cash or approved securities with the Commissioner as security for bail bonds written in connection with a judicial proceeding and receives or is promised money or other things of value therefor.
- (9) 'Runner' shall mean a person employed by a bail bondsman for the purpose of assisting the bail bondsman in presenting the defendant in court when required, or to assist in apprehension and surrender of defendant to the court, or keeping defendant under necessary surveillance, or to execute bonds on behalf of the licensed bondsman when the power of attorney has been duly

recorded. 'Runner' does not include, however, a duly licensed attorney-at-law or a law-enforcement officer assisting a bondsman.

- (10) 'Surety' shall mean one who, with the principal, is liable for the amount of the bail bond upon forfeiture of bail.
- (11) 'Surety bondsman' means any person who is licensed by the Commissioner as a surety bondsman under this Article, is appointed by an insurer by power of attorney to execute or countersign bail bonds for the insurer in connection with judicial proceedings, and receives or is promised consideration for doing so."

Section 17. G.S. 58-71-35(a) reads as rewritten:

"(a) ~~The~~ Except for bonds issued to secure the return of a motor vehicle subject to forfeiture in accordance with G.S. 20-28.3(e), the procedure for forfeiture of bail shall be that provided in Article 26 of Chapter 15A of the General Statutes and all provisions of that Article shall continue in full force and effect."

PART II. ZERO TOLERANCE FOR COMMERCIAL DRIVERS.

Section 18. G.S. 20-17(a) reads as rewritten:

"(a) The Division shall forthwith revoke the license of any driver upon receiving a record of the driver's conviction for any of the following offenses:

- (1) Manslaughter (or negligent homicide) resulting from the operation of a motor vehicle.
- (2) Either of the following impaired driving offenses:
 - a. Impaired driving under G.S. 20-138.1.
 - b. Impaired driving under G.S. ~~20-138.2 when the person convicted did not take a chemical test at the time of the offense or the person took a chemical test at the time of the offense and the test revealed that the person had an alcohol concentration at any relevant time after driving of less than 0.04 or of 0.08 or more.~~ 20-138.2.
- (3) Any felony in the commission of which a motor vehicle is used.
- (4) Failure to stop and render aid in violation of G.S. 20-166(a) or (b).
- (5) Perjury or the making of a false affidavit or statement under oath to the Division under this Article or under any other law relating to the ownership of motor vehicles.
- (6) Conviction upon two charges of reckless driving committed within a period of 12 months.
- (7) Conviction upon one charge of reckless driving while engaged in the illegal transportation of intoxicants for the purpose of sale.
- (8) Conviction of using a false or fictitious name or giving a false or fictitious address in any application for a drivers license, or learner's permit, or any renewal or duplicate thereof, or knowingly making a false statement or knowingly concealing a material fact or otherwise committing a fraud in any such application or procuring or knowingly permitting or allowing another to commit any of the foregoing acts.

- (9) Death by vehicle as defined in G.S. 20-141.4.
- (10) Repealed by Session Laws 1997-443, s. 19.26(b).
- (11) Conviction of assault with a motor vehicle.
- (12) A second or subsequent conviction of transporting an open container of alcoholic beverage under G.S. 20-138.7."
- (13) A second or subsequent conviction, as defined in G.S. 20-138.2A(d), of driving a commercial motor vehicle after consuming alcohol under G.S. 20-138.2A.
- (14) A conviction of driving a school bus, school activity bus, or child care vehicle after consuming alcohol under G.S. 20-138.2B."

Section 19. G.S. 20-17.4 reads as rewritten:

"§ 20-17.4. Disqualification to drive a commercial motor vehicle.

(a) One Year. -- Any of the following disqualifies a person from driving a commercial motor vehicle for one year:

- (1) A first conviction of G.S. 20-138.1, driving while impaired, that occurred while the person was driving a motor vehicle not a commercial motor vehicle.
- (2) A first conviction of G.S. 20-138.2, driving a commercial motor vehicle while impaired.
- (3) A first conviction of G.S. 20-166, hit and run, involving a commercial motor vehicle driven by the person.
- (4) A first conviction of a felony in the commission of which a commercial motor vehicle was used.
- (5) Refusal to submit to a chemical test when charged with an implied-consent offense, as defined in G.S. 20-16.2, that occurred while the person was driving a commercial motor vehicle.
- (6) A second or subsequent conviction, as defined in G.S. 20-138.2A(d), of driving a commercial motor vehicle after consuming alcohol under G.S. 20-138.2A.

(a1) Ten-Day Disqualification. -- A person who is convicted for a first offense of driving a commercial motor vehicle after consuming alcohol under G.S. 20-138.2A is disqualified from driving a commercial motor vehicle for 10 days.

(b) Modified Life. -- A person who has been disqualified from driving a commercial motor vehicle for a conviction or refusal described in subsection (a) who, as the result of a separate incident, is subsequently convicted of an offense or commits an act requiring disqualification under subsection (a) is disqualified for life. The Division may adopt guidelines, including conditions, under which a disqualification for life under this subsection may be reduced to 10 years.

(b1) Life Without Reduction. -- A person is disqualified from driving a commercial motor vehicle for life, without the possibility of reinstatement after 10 years, if that person is convicted of a third or subsequent violation of G.S. 20-138.2, a fourth or subsequent violation of G.S. 20-138.2A, or if the person refuses to submit to a chemical test a third time when charged with an implied-consent offense, as defined in G.S. 20-16.2, that occurred while the person was driving a commercial motor vehicle.

(c) Life. -- A person is disqualified from driving a commercial motor vehicle for life if that person uses a commercial motor vehicle in the

commission of any felony involving the manufacture, distribution, or dispensing of a controlled substance, or possession with intent to manufacture, distribute, or dispense a controlled substance.

(d) **Less Than a Year.** -- A person is disqualified from driving a commercial motor vehicle for 60 days if that person is convicted of two serious traffic violations, or 120 days if convicted of three or more serious traffic violations, committed in a commercial motor vehicle arising from separate incidents occurring within a three-year period.

(e) **Three Years.** -- A person is disqualified from driving a commercial motor vehicle for three years if that person is convicted of an offense or commits an act requiring disqualification under subsection (a) and the offense or act occurred while the person was transporting a hazardous material that required the motor vehicle driven to be placarded.

(f) **Revocation Period.** -- A person is disqualified from driving a commercial motor vehicle for the period during which the person's regular or commercial drivers license is revoked."

Section 20. G.S. 20-17.6(a) reads as rewritten:

"(a) **Scope.** -- This section applies to a person whose license was revoked as a result of a conviction of any of the following offenses:

- (1) G.S. 20-138.1, driving while impaired (DWI).
- (2) G.S. 20-138.2, commercial ~~DWI, if the person's license was revoked under G.S. 20-17(2)~~ DWI.
- (3) G.S. 20-138.3, driving while less than 21 years old after consuming alcohol or drugs.
- (4) G.S. 20-138.2A, driving a commercial motor vehicle with an alcohol concentration of greater than 0.00 and less than 0.04, if the person's drivers license was revoked under G.S. 20-17(a)(13).
- (5) G.S. 20-138.2B, driving a school bus, a school activity bus, or a child care vehicle with an alcohol concentration of greater than 0.00, if the person's drivers license was revoked under G.S. 20-17(a)(14)."

Section 21. G.S. 20-19 is amended by adding a new subsection to read:

"(c2) When a license is suspended under G.S. 20-17(a)(14), the period of revocation for a first conviction shall be for 10 days. For a second or subsequent conviction as defined in G.S. 20-138.2B(d), the period of revocation shall be one year."

Section 22. G.S. 20-36 reads as rewritten:

"§ 20-36. *Ten-year-old convictions not considered.*

No Except for a second or subsequent conviction for violating G.S. 20-138.2, a third or subsequent violation of G.S. 20-138.2A, or a second failure to submit to a chemical test when charged with an implied-consent offense, as defined in G.S. 20-16.2, that occurred while the person was driving a commercial motor vehicle, no conviction of any violation of the motor vehicle laws shall be considered by the Division in determining whether any person's driving privilege shall be suspended or revoked or in determining the appropriate period of suspension or revocation after 10 years has elapsed from the date of ~~such~~ that conviction."

Section 23. Article 3 of Chapter 20 of the General Statutes is amended by adding a new section to read:

"§ 20-138.2A. Operating a commercial vehicle after consuming alcohol.

(a) Offense. -- A person commits the offense of operating a commercial motor vehicle after consuming alcohol if the person drives a commercial motor vehicle, as defined in G.S. 20-4.01(3d)a. and b., upon any highway, any street, or any public vehicular area within the State after having consumed sufficient alcohol that the person has, at any relevant time after the driving, an alcohol concentration greater than 0.00 and less than 0.04.

(b) Implied-Consent Offense. -- An offense under this section is an implied-consent offense subject to the provisions of G.S. 20-16.2. The provisions of G.S. 20-139.1 shall apply to an offense committed under this section.

(c) Punishment. -- Except as otherwise provided in this subsection, a violation of the offense described in subsection (a) of this section is a Class 3 misdemeanor and, notwithstanding G.S. 15A-1340.23, is punishable by a penalty of one hundred dollars (\$100.00). A second or subsequent violation of this section is a misdemeanor punishable under G.S. 20-179. This offense is a lesser included offense of impaired driving of a commercial vehicle under G.S. 20-138.2.

(d) Second or Subsequent Conviction Defined. -- A conviction for violating this offense is a second or subsequent conviction if at the time of the current offense the person has a previous conviction under this section, and the previous conviction occurred in the seven years immediately preceding the date of the current offense. This definition of second or subsequent conviction also applies to G.S. 20-17(a)(13) and G.S. 20-17.4(a)(6)."

Section 24. G.S. 20-138.2(e) reads as rewritten:

"(e) ~~Punishment; Effect When Impaired Driving Offense Also Charged.~~ Punishment. -- The offense in this section is a ~~Class 1~~ misdemeanor and any defendant convicted under this section shall be sentenced under G.S. 20-179. This offense is not a lesser included offense of impaired driving under G.S. 20-138.1, but and if a person is convicted under this section and of an offense involving impaired driving under G.S. 20-138.1 arising out of the same transaction, the aggregate punishment imposed by the Court may not exceed the maximum punishment applicable to the offense involving impaired driving under G.S. 20-138.1."

Section 25. G.S. 20-179(a) reads as rewritten:

"(a) Sentencing Hearing Required. -- After a conviction for impaired driving under ~~G.S. 20-138.1~~, G.S. 20-138.1, G.S. 20-138.2, a second or subsequent conviction under G.S. 20-138.2A, or a second or subsequent conviction under G.S. 20-138.2B, the judge must hold a sentencing hearing to determine whether there are aggravating or mitigating factors that affect the sentence to be imposed. Before the hearing the prosecutor must make all feasible efforts to secure the defendant's full record of traffic convictions, and must present to the judge that record for consideration in the hearing. Upon request of the defendant, the prosecutor must furnish the defendant or his attorney a copy of the defendant's record of traffic convictions at a reasonable time prior to the introduction of the record into evidence. In

addition, the prosecutor must present all other appropriate grossly aggravating and aggravating factors of which he is aware, and the defendant or his attorney may present all appropriate mitigating factors. In every instance in which a valid chemical analysis is made of the defendant, the prosecutor must present evidence of the resulting alcohol concentration."

PART III. ZERO TOLERANCE FOR SCHOOL BUS DRIVERS AND OPERATORS OF CHILD CARE VEHICLES.

Section 26. G.S. 20-4.01(27) reads as rewritten:

"(27) Passenger Vehicles. --

- a. Excursion passenger vehicles. -- Vehicles transporting persons on sight-seeing or travel tours.
- b. For hire passenger vehicles. -- Vehicles transporting persons for compensation. This classification shall not include vehicles operated as ambulances; vehicles operated by the owner where the costs of operation are shared by the passengers; vehicles operated pursuant to a ridesharing arrangement as defined in G.S. 136-44.21; vehicles transporting students for the public school system under contract with the State Board of Education or vehicles leased to the United States of America or any of its agencies on a nonprofit basis; or vehicles used for human service or volunteer transportation.
- c. Common carriers of passengers. -- Vehicles operated under a certificate of authority issued by the Utilities Commission for operation on the highways of this State between fixed termini or over a regular route for the transportation of persons for compensation.
- c1. Child care vehicles. -- Vehicles under the direction and control of a child care facility, as defined in G.S. 110-86(3), and driven by an owner, employee, or agent of the child care facility for the primary purpose of transporting children to and from the child care facility, or to and from a place for participation in an event or activity in connection with the child care facility.
- d. Motorcycles. -- Vehicles having a saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground, including motor scooters and motor-driven bicycles, but excluding tractors and utility vehicles equipped with an additional form of device designed to transport property, three-wheeled vehicles while being used by law-enforcement agencies and mopeds as defined in subdivision d1 of this subsection.
- d1. Moped. -- A vehicle that has two or three wheels, no external shifting device, and a motor that does not exceed 50 cubic centimeters piston displacement and cannot propel the vehicle at a speed greater than 20 miles per hour on a level surface.
- d2. Motor home or house car. -- A vehicular unit, designed to provide temporary living quarters, built into as an integral

part, or permanently attached to, a self-propelled motor vehicle chassis or van. The vehicle must provide at least four of the following facilities: cooking, refrigeration or icebox, self-contained toilet, heating or air conditioning, a portable water supply system including a faucet and sink, separate 110-125 volt electrical power supply, or an LP gas supply.

- d3. School activity bus. -- A vehicle, generally painted a different color from a school bus, whose primary purpose is to transport school students and others to or from a place for participation in an event other than regular classroom work. The term includes a public, private, or parochial vehicle that meets this description.
- d4. School bus. -- A vehicle whose primary purpose is to transport school students over an established route to and from school for the regularly scheduled school day, that is equipped with alternately flashing red lights on the front and rear and a mechanical stop signal, and that bears the words "School Bus" on the front and rear in letters at least 8 inches in height. The term includes a public, private, or parochial vehicle that meets this description.
- e. U-drive-it passenger vehicles. -- Vehicles rented or leased to be operated by the lessee. This shall not include vehicles of nine-passenger capacity or less which are leased for a term of one year or more to the same person or vehicles leased or rented to public school authorities for driver-training instruction.
- f. Ambulances. -- Vehicles equipped for transporting wounded, injured, or sick persons.
- g. Private passenger vehicles. -- All other passenger vehicles not included in the above definitions."

Section 27. Article 3 of Chapter 20 of the General Statutes is amended by adding a new section to read:

"§ 20-138.2B. Operating a school bus, school activity bus, or child care vehicle after consuming alcohol.

(a) Offense. -- A person commits the offense of operating a school bus, school activity bus, or child care vehicle after consuming alcohol if the person drives a school bus, school activity bus, or child care vehicle upon any highway, any street, or any public vehicular area within the State after having consumed sufficient alcohol that the person has, at any relevant time after the driving, an alcohol concentration greater than 0.00.

(b) Implied-Consent Offense. -- An offense under this section is an implied-consent offense subject to the provisions of G.S. 20-16.2. The provisions of G.S. 20-139.1 shall apply to an offense committed under this section.

(c) Punishment. -- Except as otherwise provided in this subsection, a violation of the offense described in subsection (a) of this section is a Class 3 misdemeanor and, notwithstanding G.S. 15A-1340.23, is punishable by a penalty of one hundred dollars (\$100.00). A second or subsequent violation

of this section is a misdemeanor punishable under G.S. 20-179. This offense is a lesser included offense of impaired driving of a commercial vehicle under G.S. 20-138.1.

(d) Second or Subsequent Conviction Defined. -- A conviction for violating this offense is a second or subsequent conviction if at the time of the current offense the person has a previous conviction under this section, and the previous conviction occurred in the seven years immediately preceding the date of the current offense. This definition of second or subsequent conviction also applies to G.S. 20-19(c2)."

PART IV. IMMEDIATE CIVIL REVOCATION FOR DRIVERS UNDER 21 YEARS OF AGE.

Section 28. G.S. 20-16.2(a) reads as rewritten:

"(a) **Basis for Charging Officer to Require Chemical Analysis; Notification of Rights.** -- Any person who drives a vehicle on a highway or public vehicular area thereby gives consent to a chemical analysis if charged with an implied-consent offense. The charging officer shall designate the type of chemical analysis to be administered, and it may be administered when the officer has reasonable grounds to believe that the person charged has committed the implied-consent offense.

Except as provided in this subsection or subsection (b), before any type of chemical analysis is administered the person charged shall be taken before a chemical analyst authorized to administer a test of a person's breath, who shall inform the person orally and also give the person a notice in writing that:

- (1) The person has a right to refuse to be tested.
- (2) Refusal to take any required test or tests will result in an immediate revocation of the person's driving privilege for at least 30 days and an additional 12-month revocation by the Division of Motor Vehicles.
- (3) The test results, or the fact of the person's refusal, will be admissible in evidence at trial on the offense charged.
- (4) The person's driving privilege will be revoked immediately for at least 30 days if:
 - a. The test reveals an alcohol concentration of 0.08 or more; or
 - b. The person was driving a commercial motor vehicle and the test reveals an alcohol concentration of 0.04 or ~~more~~ more; or
 - c. The person is under 21 years of age and the test reveals any alcohol concentration."

Section 29. G.S. 20-16.5(b) reads as rewritten:

"(b) ~~Revocations for Persons Who Refuse Chemical Analyses or Have Alcohol Concentrations of 0.08 or More After Driving a Motor Vehicle or of 0.04 or More After Driving a Commercial Vehicle. Who Are Charged With Certain Implied-Consent Offenses.~~ -- A person's driver's license is subject to revocation under this section if:

- (1) A charging officer has reasonable grounds to believe that the person has committed an offense subject to the implied-consent provisions of G.S. 20-16.2;
- (2) The person is charged with that offense as provided in G.S. 20-16.2(a);

- (3) The charging officer and the chemical analyst comply with the procedures of G.S. 20-16.2 and G.S. 20-139.1 in requiring the person's submission to or procuring a chemical analysis; and
- (4) The person:
 - a. Willfully refuses to submit to the chemical analysis; -
 - b. Has an alcohol concentration of 0.08 or more within a relevant time after the driving; ~~or~~
 - c. Has an alcohol concentration of 0.04 or more at any relevant time after the driving of a commercial ~~vehicle, vehicle; or~~
 - d. Has any alcohol concentration at any relevant time after the driving and the person is under 21 years of age."

Section 30. G.S. 20-16.5(b1) reads as rewritten:

"(b1) Precharge Test Results as Basis for Revocation. -- Notwithstanding the provisions of subsection (b), a person's driver's license is subject to revocation under this section if:

- (1) ~~He~~ The person requests a precharge chemical analysis pursuant to G.S. 20-16.2(i); and
- (2) ~~He~~ The person has:
 - a. An alcohol concentration of 0.08 or more at any relevant time after driving; ~~or~~
 - b. An alcohol concentration of 0.04 or more at any relevant time after driving a commercial motor vehicle; ~~and or~~
 - c. Any alcohol concentration at any relevant time after driving and the person is under 21 years of age; and
- (3) ~~He~~ The person is charged with an implied-consent offense."

PART V. INCREASE FINES FOR DWI OFFENSES.

Section 31. G.S. 20-179(g) reads as rewritten:

"(g) Level One Punishment. -- A defendant subject to Level One punishment may be fined up to ~~two thousand dollars (\$2,000)~~ four thousand dollars (\$4,000) and shall be sentenced to a term of imprisonment that includes a minimum term of not less than 30 days and a maximum term of not more than 24 months. The term of imprisonment may be suspended only if a condition of special probation is imposed to require the defendant to serve a term of imprisonment of at least 30 days. If the defendant is placed on probation, the judge shall impose a requirement that the defendant obtain a substance abuse assessment and the education or treatment required by G.S. 20-17.6 for the restoration of a drivers license and as a condition of probation. The judge may impose any other lawful condition of probation."

Section 32. G.S. 20-179(h) reads as rewritten:

"(h) Level Two Punishment. -- A defendant subject to Level Two punishment may be fined up to ~~one thousand dollars (\$1,000)~~ two thousand dollars (\$2,000) and shall be sentenced to a term of imprisonment that includes a minimum term of not less than seven days and a maximum term of not more than 12 months. The term of imprisonment may be suspended only if a condition of special probation is imposed to require the defendant to serve a term of imprisonment of at least seven days. If the defendant is placed on probation, the judge shall impose a requirement that the defendant obtain a substance abuse assessment and the education or treatment required

by G.S. 20-17.6 for the restoration of a drivers license and as a condition of probation. The judge may impose any other lawful condition of probation."

Section 33. G.S. 20-179(i) reads as rewritten:

"(i) Level Three Punishment. -- A defendant subject to Level Three punishment may be fined up to ~~five hundred dollars (\$500.00)~~ one thousand dollars (\$1,000) and shall be sentenced to a term of imprisonment that includes a minimum term of not less than 72 hours and a maximum term of not more than six months. The term of imprisonment may be suspended. However, the suspended sentence shall include the condition that the defendant:

- (1) Be imprisoned for a term of at least 72 hours as a condition of special probation; or
- (2) Perform community service for a term of at least 72 hours; or
- (3) Not operate a motor vehicle for a term of at least 90 days; or
- (4) Any combination of these conditions.

If the defendant is placed on probation, the judge shall impose a requirement that the defendant obtain a substance abuse assessment and the education or treatment required by G.S. 20-17.6 for the restoration of a drivers license and as a condition of probation. The judge may impose any other lawful condition of probation."

Section 34. G.S. 20-179(j) reads as rewritten:

"(j) Level Four Punishment. -- A defendant subject to Level Four punishment may be fined up to ~~two hundred fifty dollars (\$250.00)~~ five hundred dollars (\$500.00) and shall be sentenced to a term of imprisonment that includes a minimum term of not less than 48 hours and a maximum term of not more than 120 days. The term of imprisonment may be suspended. However, the suspended sentence shall include the condition that the defendant:

- (1) Be imprisoned for a term of 48 hours as a condition of special probation; or
- (2) Perform community service for a term of 48 hours; or
- (3) Not operate a motor vehicle for a term of 60 days; or
- (4) Any combination of these conditions.

If the defendant is placed on probation, the judge shall impose a requirement that the defendant obtain a substance abuse assessment and the education or treatment required by G.S. 20-17.6 for the restoration of a drivers license and as a condition of probation. The judge may impose any other lawful condition of probation."

Section 35. G.S. 20-179(k) reads as rewritten:

"(k) Level Five Punishment. -- A defendant subject to Level Five punishment may be fined up to ~~one hundred dollars (\$100.00)~~ two hundred dollars (\$200.00) and shall be sentenced to a term of imprisonment that includes a minimum term of not less than 24 hours and a maximum term of not more than 60 days. The term of imprisonment may be suspended. However, the suspended sentence shall include the condition that the defendant:

- (1) Be imprisoned for a term of 24 hours as a condition of special probation; or
- (2) Perform community service for a term of 24 hours; or

- (3) Not operate a motor vehicle for a term of 30 days; or
- (4) Any combination of these conditions.

If the defendant is placed on probation, the judge shall impose a requirement that the defendant obtain a substance abuse assessment and the education or treatment required by G.S. 20-17.6 for the restoration of a drivers license and as a condition of probation. The judge may impose any other lawful condition of probation."

PART VI. MISCELLANEOUS PROVISIONS.

Section 36. From funds appropriated to the Department of Public Instruction, the Department shall be authorized to hire a person to handle the administration of a statewide contract, or regional contracts for services to tow, store, process, maintain, and sell motor vehicles seized pursuant to G.S. 20-28.9.

Section 37. The Joint Legislative Education Oversight Committee shall study the effect of the DWI forfeiture provisions as set forth in G.S. 20-28.2 through G.S. 20-28.9 and the financial impact on county boards of education. The study shall include, among other relevant information, a statistical analysis of the number of vehicles seized, the length of time vehicles are held until disposition by the court, the percentage of seized vehicles forfeited, the sale price of seized vehicles sold, the average towing and storage costs, and county school administrative costs associated with the seizure and forfeiture of the vehicles. The Committee shall recommend ways to make the procedure and process for managing seized and forfeited vehicles more efficient and effective. The Committee may report to the 1999 General Assembly.

Section 38. G.S. 115C-276 is amended by adding a new subsection to read:

"(t) Report on DWI Vehicle Forfeiture. -- The superintendent, or the superintendent's designee, of each county school system shall report by October 1 of each year to the Department of Public Instruction the receipts received by the county school from the sale of seized vehicles and all costs to the county board of education for administering the DWI motor vehicle forfeiture law. The Department of Public Instruction shall report to the Joint Legislative Education Oversight Committee annually by December 1 the results of these reports filed by the county school superintendents under this section."

PART VII. EFFECTIVE DATE.

Section 39. The provisions of G.S. 20-28.2(a1)(1a), 20-28.3(i), 20-28.5(a), 20-28.9, and Part VI as set forth in this act become effective October 15, 1998, and the other provisions of Part I of this act become effective December 1, 1998, and apply to offenses committed, contracts entered, and motor vehicles seized on or after that date. Parts II, III, IV, and V of this act become effective December 1, 1998, and apply to offenses committed on or after that date. The remainder of this act is effective when it becomes law. The provisions of G.S. 20-28.3(e), (e1), (e2), (e3), (h), and (i) as set forth in Section 3 of this act shall also apply to vehicles held on or after the effective date as a result of seizure that occurred before, on, or after that date. Where the expedited sales provisions of G.S. 20-28.3(i) are applied to motor vehicles seized on or after December 1, 1997, and

before December 1, 1998, the county board of education shall refund any towing or storage costs received as a result of the expedited sale, if the court finds that the motor vehicle owner is not obligated to pay towing and storage costs.

In the General Assembly read three times and ratified this the 8th day of October, 1998.

Became law upon approval of the Governor at 1:46 p.m. on the 14th day of October, 1998.

H.B. 20

SESSION LAW 1998-183

AN ACT TO INCREASE TO SEVEN PERCENT THE INCOME TAX CREDIT FOR CHARITABLE CONTRIBUTIONS BY NONITEMIZERS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-151.26 reads as rewritten:

"§ 105-151.26. *Credit for charitable contributions by nonitemizers.*

A taxpayer who elects the standard deduction under section 63 of the Code for federal tax purposes is allowed as a credit against the tax imposed by this Part an amount equal to ~~two and three-fourths percent (2.75%)~~ seven percent (7%) of the taxpayer's excess charitable contributions. The taxpayer's excess charitable contributions are the amount by which the taxpayer's charitable contributions for the taxable year that would have been deductible under section 170 of the Code if the taxpayer had not elected the standard deduction exceed two percent (2%) of the taxpayer's adjusted gross income as calculated under the Code.

No credit shall be allowed under this section for amounts deducted from gross income in calculating taxable income under the Code or for contributions for which a credit was claimed under G.S. 105-151.12 or G.S. 105-151.14. A nonresident or part-year resident who claims the credit allowed by this section shall reduce the amount of the credit by multiplying it by the fraction calculated under G.S. 105-134.5(b) or (c), as appropriate. The credit allowed under this section may not exceed the amount of tax imposed by this Part for the taxable year reduced by the sum of all credits allowed, except payments of tax made by or on behalf of the taxpayer."

Section 2. This act is effective for taxable years beginning on or after January 1, 1999.

In the General Assembly read three times and ratified this the 7th day of October, 1998.

Became law upon approval of the Governor at 1:40 p.m. on the 15th day of October, 1998.

S.B. 1291

SESSION LAW 1998-184

AN ACT TO AUTHORIZE THE DEPARTMENT OF TRANSPORTATION, REGIONAL PUBLIC TRANSPORTATION AUTHORITIES, AND REGIONAL TRANSPORTATION AUTHORITIES TO CREATE TRANSPORTATION CORRIDORS AND

PROTECT THEM FROM DEVELOPMENT, AND TO INSURE PROPER NOTICE TO ALL PROPERTY OWNERS AFFECTED BY THE CORRIDORS.

The General Assembly of North Carolina enacts:

Section 1. Article 2E of Chapter 136 reads as rewritten:

"ARTICLE 2E.

"Roadway Transportation Corridor Official Map Act.

"§ 136-44.50. Roadway Transportation corridor official map act.

(a) A roadway transportation corridor official map may be adopted or ~~amended~~ amended by any of the following:

- (1) by the The governing board of any city for any thoroughfare included as part of a comprehensive plan for streets and highways adopted pursuant to G.S. 136-66.2 or G.S. 136-66.2 or for any proposed public transportation corridor included in the adopted long-range transportation plan.
- (2) by the The Board of Transportation for any portion of the existing or proposed State highway system, system or for any public transportation corridor, to include rail, that is in the Transportation Improvement Program.
- (3) Regional public transportation authorities created pursuant to Article 26 of Chapter 160A of the General Statutes or regional transportation authorities created pursuant to Article 27 of Chapter 160A of the General Statutes for any proposed public transportation corridor, or adjacent station or parking lot, included in the adopted long-range transportation plan.

Before a city adopts a roadway transportation corridor official map that extends beyond the extraterritorial jurisdiction of its building permit issuance and subdivision control ordinances, or adopts an amendment to a roadway transportation corridor official map outside the extraterritorial jurisdiction of its building permit issuance and subdivision control ordinances, the city ~~must~~ shall obtain approval from the Board of County Commissioners.

No roadway transportation corridor official map shall be adopted or amended, nor may any property be regulated under this Article until:

- (1) The governing board of the ~~city~~ city, the regional transportation authority, or the Department of Transportation in each county affected by the map, has held a public hearing in each county affected by the map on the proposed map or amendment. Notice of the hearing shall be provided:
 - a. By publication at least once a week for four successive weeks prior to the hearing in a newspaper having general circulation in the county in which the roadway transportation corridor to be designated is located.
 - b. By two week written notice to the Secretary of Transportation, the Chairman of the Board of County Commissioners, and the Mayor of any city or town through whose corporate or extraterritorial jurisdiction the roadway transportation corridor passes.

- c. By posting copies of the proposed roadway transportation corridor map or amendment at the courthouse door for at least 21 days prior to the hearing date. The notice required in subdivision a. above shall make reference to this posting.
 - d. By first-class mail sent to each property owner affected by the corridor. The notice shall be sent to the address listed for the owner in the county tax records.
- (2) A permanent certified copy of the roadway transportation corridor official map or amendment has been filed with the register of deeds. The boundaries may be defined by map or by written description, or a combination thereof. The copy shall measure approximately 20 inches by 12 inches, including no less than one and one-half inches binding space on the left-hand side.
 - (3) The names of all property owners affected by the corridor have been submitted to the Register of Deeds.
- (b) Roadway Transportation corridor official maps and amendments shall be distributed and maintained in the following manner:
- (1) A copy of the official map and each amendment thereto shall be filed in the office of the city clerk and in the office of the district engineer.
 - (2) A copy of the official map, each amendment thereto and any variance therefrom granted pursuant to G.S. 136-44.52 shall be furnished to the tax supervisor of any county and tax collector of any city affected thereby. The portion of properties embraced within a roadway transportation corridor and any variance granted shall be clearly indicated on all tax maps maintained by the county or city for such period as the designation remains in effect.
 - (3) Notwithstanding any other provision of law, the certified copy filed with the register of deeds shall be placed in a book maintained for that purpose and cross-indexed by number of road, street name, or other appropriate description. The register of deeds shall collect a fee of five dollars (\$5.00) for each map sheet or page recorded.
 - (4) The names submitted as required under subdivision (a)(3) of this section shall be indexed in the 'grantor' index by the Register of Deeds.
- (c) Repealed by Session Laws 1989, c. 595, s. 1.
- (d) Within one year following the establishment of a roadway transportation corridor official map or amendment, work shall begin on an environmental impact statement or preliminary engineering. The failure to begin work on the environmental impact statement or preliminary engineering within the one-year period shall constitute an abandonment of the corridor, and the provisions of this Article shall no longer apply to properties or portions of properties embraced within the roadway transportation corridor. A city may prepare environmental impact studies and preliminary engineering work in connection with the establishment of a roadway transportation corridor official map or amendments to a roadway transportation corridor official map. When a city prepares a roadway transportation corridor official map for a street or highway that has been designated a State responsibility pursuant to G.S. 136-66.2, the

environmental impact study and preliminary engineering work shall be reviewed and approved by the Department of Transportation. An amendment to a corridor shall not extend the two-year period provided by this section unless it establishes a substantially different corridor in a primarily new location.

(e) The term 'amendment' for purposes of this section includes any change to a transportation corridor official map, including:

- (1) Failure of the Department of Transportation, a city, or a regional transportation authority to begin work on an environmental impact statement or preliminary engineering as required by this section;
or
- (2) Deletion of the corridor from the transportation corridor official map by action of the Board of Transportation, or deletion of the corridor from the long-range transportation plan of a city or regional transportation authority by action of the city or regional transportation authority governing Board.

(f) The term 'transportation corridor' as used in this Article does not include bikeways or greenways.

"§ 136-44.51. Effect of ~~roadway~~ transportation corridor official map.

(a) After a ~~roadway~~ transportation corridor official map is filed with the register of deeds, no building permit shall be issued for any building or structure or part thereof located within the ~~roadway~~ transportation corridor, nor shall approval of a subdivision, as defined in G.S. 153A-335 and G.S. 160A-376, be granted with respect to property within the ~~roadway~~ transportation corridor. The ~~district engineer of the Highway District in which the roadway corridor is located~~ Secretary of Transportation or his designee, the director of a regional public transportation authority, or the director of a regional transportation authority, as appropriate, shall be notified within 10 days of all requests for building permits or subdivision approval within the ~~roadway~~ transportation corridor. The provisions of this section shall not apply to valid building permits issued prior to August 7, 1987, or to building permits for buildings and structures which existed prior to the filing of the ~~roadway~~ transportation corridor provided the size of the building or structure is not increased and the type of building code occupancy as set forth in the North Carolina Building Code is not changed.

(b) ~~No~~ In any event, no application for building permit issuance or subdivision plat approval for a tract subject to a valid transportation corridor official map shall be delayed by the provisions of this section for more than three years from the date of its original submittal.

"§ 136-44.52. Variance from ~~roadway~~ transportation corridor official map.

(a) The Department of ~~Transportation or~~ Transportation, the regional public transportation authority, the regional transportation authority, or the city which initiated the ~~roadway~~ transportation corridor official map shall establish procedures for considering petitions for variance from the requirements of G.S. 136-44.51.

(b) The procedure established by the State shall provide for written notice to the Mayor and Chairman of the Board of County Commissioners of any affected city or county, and for the hearing to be held in the county where the affected property is located.

(c) Cities may provide for petitions for variances to be heard by the board of adjustment or other boards or commissions which can hear variances authorized by G.S. 160A-388. The procedures for boards of adjustment shall be followed except that no vote greater than a majority shall be required to grant a variance.

(c1) The procedure established by a regional public transportation authority or a regional transportation authority pursuant to subsection (a) of this section shall provide for a hearing de novo by the Department of Transportation for any petition for variance which is denied by the regional public transportation authority or the regional transportation authority. All hearings held by the Department of Transportation under this subsection shall be conducted in accordance with procedures established by the Department of Transportation pursuant to subsection (a) of this section.

(d) A variance may be granted upon a showing that:

- (1) Even with the tax benefits authorized by this Article, no reasonable return may be earned from the land; and
- (2) The requirements of G.S. 136-44.51 result in practical difficulties or unnecessary hardships.

"§ 136-44.53. Advance acquisition of right-of-way within the ~~roadway~~ transportation corridor.

(a) After a ~~roadway~~ transportation corridor official map is filed with the register of ~~deeds~~, the deeds, a property owner has the right of petition to the filer of the map for acquisition of the property due to an imposed hardship. The Department of ~~Transportation~~ or Transportation, the regional public transportation authority, the regional transportation authority, or the city which initiated the ~~roadway~~ transportation corridor official map is authorized to may make advanced acquisition of specific parcels of property when such that acquisition is determined by the respective governing board to be in the best public interest to protect the ~~roadway~~ transportation corridor from development or when the ~~roadway~~ transportation corridor official map creates an undue hardship on the affected property owner. The procedure established by a regional public transportation authority or a regional transportation authority pursuant to subsection (b) of this section shall provide for a hearing de novo by the Department of Transportation for any request for advance acquisition due to hardship that is denied by an authority. All hearings held by the Department under this subsection shall be conducted in accordance with procedures established by the Department pursuant to subsection (b) of this section. Any decision of the Department pursuant to this subsection shall be final and binding. Any property determined eligible for hardship acquisition shall be acquired within three years of the finding or the restrictions of the map shall be removed from the property.

(b) Prior to making any such advanced acquisition of right-of-way under the authority of this Article, the Board of Transportation or the respective ~~municipal~~ governing board which initiated the ~~roadway~~ transportation corridor official map shall develop and adopt appropriate policies and procedures to govern such the advanced acquisition of right-of-way and to assure such that the advanced acquisition is in the best overall public interest.

(c) When a city makes an advanced right-of-way acquisition of property within a roadway transportation corridor official map for a street or highway that has been determined to be a State responsibility pursuant to the provisions of G.S. 136-66.2, the Department of Transportation shall reimburse the city for the cost of ~~such~~ any advanced right-of-way acquisition at the time the street or highway is constructed. The Department of Transportation shall have no responsibility to reimburse a municipality for any advanced right-of-way acquisition for a street or highway that has not been designated a State responsibility pursuant to the provisions of G.S. 136-66.2 prior to the initiation of the advanced acquisition by the city. The city shall obtain the concurrence of the Department of Transportation in all instances of advanced acquisition.

(d) In exercising the authority granted by this section, a municipality is authorized to expend municipal funds for the protection of rights-of-way shown on a duly adopted roadway transportation corridor official map whether the right-of-way to be acquired is located inside or outside the municipal corporate limits.

"§ 136-44.54. Standard for appraisal of right-of-way within corridor.

The Department shall utilize the criteria contained in 49 C.F.R. § 24.103 (1997) when appraising right-of-way in a transportation corridor designated under this Article."

Section 2. G.S. 105-277.9 reads as rewritten:

"§ 105-277.9. Taxation of property inside certain roadway corridors.

Real property that lies within a roadway transportation corridor marked on an official map filed under Article 2E of Chapter 136 of the General Statutes is designated a special class of property under Article V, Sec. 2(2) of the North Carolina Constitution and is taxable at twenty percent (20%) of the general tax rate levied on real property by the taxing unit in which the property is situated if:

- (1) As of January 1, no building or other structure is located on the property; and
- (2) The property has not been subdivided, as defined in G.S. 153A-335 or G.S. 160A-376, since it was included in the corridor."

Section 3. G.S. 136-102.6(j) reads as rewritten:

"(j) The Division of Highways and district engineers of the Division of Highways of the Department of Transportation shall issue a certificate of approval for any subdivision affected by a roadway transportation corridor official map established by the Board of Transportation only if the subdivision conforms to Article 2E of this Chapter or conforms to any variance issued in accordance with that Article."

Section 4. G.S. 160A-458.4 reads as rewritten:

"§ 160A-458.4. Designation of roadway transportation corridor official maps.

Any city may establish roadway transportation corridor official maps and may enact and enforce ordinances pursuant to Article 2E of Chapter 136 of the General Statutes."

Section 5. G.S. 161-14 is amended by adding a new subsection to read:

"(c) Transportation corridor official maps authorized under Article 2E of Chapter 136 shall be registered and indexed by the end of the third business day after the business day the map is presented to the Register of Deeds."

Section 6. This act becomes effective November 1, 1998, and applies to transportation corridor official maps, or amendments to those maps, adopted on or after the effective date of this act.

In the General Assembly read three times and ratified this the 6th day of October, 1998.

Became law upon approval of the Governor at 9:15 a.m. on the 16th day of October, 1998.

S.B. 1280

SESSION LAW 1998-185

AN ACT TO PROVIDE AN ALTERNATIVE PROCUREMENT BY COMPETITIVE PROPOSAL PROCEDURE FOR THE PURCHASE OF APPARATUS, SUPPLIES, MATERIALS, OR EQUIPMENT BY A REGIONAL PUBLIC TRANSPORTATION AUTHORITY OR A REGIONAL TRANSPORTATION AUTHORITY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143-129 is amended by adding a new subsection to read:

"(h) Notwithstanding any other provision of this section, any board or governing body of any regional public transportation authority, hereafter referred to as a 'RPTA,' created pursuant to Article 26 of Chapter 160A of the General Statutes, or a regional transportation authority, hereafter referred to as a 'RTA,' created pursuant to Article 27 of Chapter 160A of the General Statutes, may approve the entering into of any contract for the purchase, lease, or other acquisition of any apparatus, supplies, materials, or equipment without competitive bidding and without meeting the requirements of subsection (b) of this section if the following procurement by competitive proposal (Request for Proposal) method is followed.

The competitive proposal method of procurement is normally conducted with more than one source submitting an offer or proposal. Either a fixed price or cost reimbursement type contract is awarded. This method of procurement is generally used when conditions are not appropriate for the use of sealed bids. If this procurement method is used, all of the following requirements apply:

- (1) Requests for proposals shall be publicized. All evaluation factors shall be identified along with their relative importance.
- (2) Proposals shall be solicited from an adequate number of qualified sources.
- (3) RPTAs or RTAs shall have a method in place for conducting technical evaluations of proposals received and selecting awardees, with the goal of promoting fairness and competition without requiring strict adherence to specifications or price in determining the most advantageous proposal.
- (4) The award may be based upon initial proposals without further discussion or negotiation or, in the discretion of the evaluators,

discussions or negotiations may be conducted either with all offerors or with those offerors determined to be within the competitive range, and one or more revised proposals or a best and final offer may be requested of all remaining offerors. The details and deficiencies of an offeror's proposal may not be disclosed to other offerors during any period of negotiation or discussion.

- (5) The award shall be made to the responsible firm whose proposal is most advantageous to the RPTA's or the RTA's program with price and other factors considered.

The contents of the proposals shall not be public records until 14 days before the award of the contract.

The board or governing body of the RPTA or the RTA shall, at the regularly scheduled meeting, by formal motion make findings of fact that the procurement by competitive proposal (Request for Proposals) method of procuring the particular apparatus, supplies, materials, or equipment is the most appropriate acquisition method prior to the issuance of the requests for proposals and shall by formal motion certify that the requirements of this subsection have been followed before approving the contract.

Nothing in this subsection subjects a procurement by competitive proposal under this subsection to G.S. 143-49, 143-52, or 143-53.

RPTAs and RTAs may adopt regulations to implement this subsection."

Section 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 6th day of October, 1998.

Became law upon approval of the Governor at 9:16 a.m. on the 16th day of October, 1998.

S.B. 1150

SESSION LAW 1998-186

AN ACT TO DELAY THE SUNSET OF THE REQUIREMENT THAT COUNTIES USE PART OF THE TWO HALF-CENT LOCAL SALES TAX PROCEEDS ONLY FOR PUBLIC SCHOOL CAPITAL OUTLAY PURPOSES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-487(a) reads as rewritten:

"(a) Except as provided in subsection (c), forty percent (40%) of the revenue received by a county from additional one-half percent (1/2%) sales and use taxes levied under this Article during the first five fiscal years in which the additional taxes are in effect in the county and thirty percent (30%) of the revenue received by a county from these taxes in the next ~~40~~ 23 fiscal years in which the taxes are in effect in the county may be used by the county only for public school capital outlay purposes as defined in G.S. 115C-426(f) or to retire any indebtedness incurred by the county for these purposes."

Section 2. G.S. 105-502(a) reads as rewritten:

"(a) Sixty percent (60%) of the revenue received by a county under this Article during the first ~~46~~ 25 fiscal years in which the tax is in effect may

be used by the county only for public school capital outlay purposes as defined in G.S. 115C-426(f) or to retire any indebtedness incurred by the county for these purposes during the period beginning five years prior to the date the taxes took effect."

Section 3. This act becomes effective July 1, 1998.

In the General Assembly read three times and ratified this the 8th day of October, 1998.

Became law upon approval of the Governor at 9:17 a.m. on the 16th day of October, 1998.

S.B. 350

SESSION LAW 1998-187

AN ACT TO AMEND THE LAWS GOVERNING EMPLOYEE INSURANCE COMMITTEES TO ALLOW FOR A CENTRAL EMPLOYEE INSURANCE COMMITTEE IN THE DEPARTMENT OF HUMAN RESOURCES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 58-31-60(b) reads as rewritten:

"(b) Appointment of Employee Insurance Committee Members. -- The members of the Employee Insurance Committee shall be appointed by the head of the payroll unit. The Committee shall consist of not less than five or more than nine individuals a majority of whom have been employed in the payroll unit for at least one year. The committee members shall, except where necessary initially to establish the rotation herein prescribed, serve three-year terms with approximately one-third of the terms expiring annually. Committee membership make-up shall fairly represent the work force in the payroll unit and be selected without regard to any political or other affiliations. It shall be the duty of the payroll unit head to assure that the Employee Insurance Committee is completely autonomous in its selection of insurance products and insurance companies and that no member of the Employee Insurance Committee has any conflict of interest in serving on the Committee. A committee on employee benefits elected or appointed by the faculty representative body of a constituent institution of The University of North Carolina shall be deemed constituted and functioning as an employee insurance committee in accordance with this section. Any decision rendered by the Employee Insurance Committee where the autonomy of the Committee or a conflict of interest is questioned shall be subject to appeal pursuant to the Administrative Procedure Act, or in the case of departments, boards and commissions which are specifically exempt from the Administrative Procedure Act, pursuant to the appeals procedure prescribed for such department, board or commission.

~~All payroll units in existence on May 21, 1985, shall continue to be deemed payroll units, regardless of any subsequent consolidation of such payroll units, for purposes of the appointment of the members of the Employee Insurance Committee in order to assure such units the continuing ability to meet the needs and desires of the employees of such units by having the right to select insurance carriers and insurance products. No Employee Insurance Committee shall be created for employees represented~~

~~by a previously existing committee. Any such duplicative Employee Insurance Committees are hereby disbanded. In the event of the consolidation of a payroll unit, the head of the former payroll unit shall appoint the members of the Committee in accordance with the provisions of this section."~~

Section 2. Effective January 1, 1999, the employee insurance committees of the Department of Health and Human Services are abolished and shall be replaced with a single employee insurance committee, appointed by the Secretary of the Department of Health and Human Services, to represent all employees of that Department.

Section 3. This act becomes effective January 1, 1999.

In the General Assembly read three times and ratified this the 8th day of October, 1998.

Became law upon approval of the Governor at 9:19 a.m. on the 16th day of October, 1998.

H.B. 1480

SESSION LAW 1998-188

AN ACT TO PROVIDE FOR THE REGISTRATION OF SWINE OPERATION INTEGRATORS BY SWINE GROWERS, TO EXTEND BY SIX MONTHS THE MORATORIA ON CONSTRUCTION OR EXPANSION OF SWINE FARMS AND ON LAGOONS AND ANIMAL WASTE MANAGEMENT SYSTEMS FOR SWINE FARMS, AND TO CLARIFY EXCEPTIONS TO THE STATEWIDE MORATORIUM.

The General Assembly of North Carolina enacts:

Section 1. Part 1A of Article 21 of Chapter 143 of the General Statutes is amended by adding a new section to read:

"§ 143-215.10H. Swine integrator registration.

(a) Definitions. -- As used in this section:

- (1) 'Grower' means a person who holds a permit for an animal waste management system under this Part or Part 1 of this Article for a swine farm, or who operates a swine farm that is subject to an operations review conducted pursuant to G.S. 143-215.10D or an inspection conducted pursuant to G.S. 143-215.10F.
- (2) 'Swine farm' has the same meaning as in G.S. 106-802.
- (3) 'Swine operation integrator' or 'integrator' means a person, other than a grower, who provides 250 or more animals to a swine farm and who either has an ownership interest in the animals or otherwise establishes management and production standards for the permit holder for the maintenance, care, and raising of the animals. An ownership interest includes a right or option to purchase the animals.

(b) Registration Required. -- As part of an operations review conducted pursuant to G.S. 143-215.10D or an inspection conducted pursuant to G.S. 143-215.10F, the Department shall require a grower to register any swine operation integrator with which the grower has a contractual relationship to raise swine. The registration shall be in writing and shall include only:

- (1) The name of the owner of the swine farm.
- (2) The mailing address of the owner of the swine farm.
- (3) The physical location of the swine farm.
- (4) The swine farm facility number.
- (5) A description of the animal waste management system for the swine farm.
- (6) The name and address of the grower, if different from the owner of the swine farm.
- (7) The name and mailing address of the integrator.

(c) Notice of Termination or New Relationship. -- If the swine operation integrator removes all animals from a swine farm or terminates the integrator's relationship with the swine farm, the grower shall notify the Department of the termination or removal within 30 days. If the grower terminates the grower's relationship with the integrator or enters into a relationship with a different integrator, the grower shall notify the Department of the termination or new relationship within 30 days.

(d) Disclosure of Violations. -- The Department shall notify a swine operation integrator of all notices of deficiencies and violations of laws and rules governing the animal waste management system at any swine farm for which the integrator has been registered with the Department. A notice of deficiency or violation of any law or rule governing an animal waste management system is a public record within the meaning of G.S. 132-1 and is subject to disclosure as provided in Chapter 132 of the General Statutes."

Section 2. Section 1.1 of S.L. 1997-458 reads as rewritten:

"Section 1.1. (a) Moratorium Established. -- As used in this ~~section,~~ swine section:

- (1) 'Swine farm' and 'lagoon' have the same meaning as in G.S. 106-802. ~~As used in this section, 'animal~~
- (2) 'Animal waste management system' has the same meaning as in G.S. 143-215.10B.
- (3) 'Anaerobic lagoon' means a lagoon that treats waste by converting it into carbon dioxide, methane, ammonia, and other gaseous compounds; organic acids; and cell tissue through an anaerobic process.
- (4) 'Anaerobic process' means a biological treatment process that occurs in the absence of dissolved oxygen.

(a) There is hereby established a moratorium on the construction or expansion of swine farms and on lagoons and animal waste management systems for swine farms. The purposes of this moratorium are to allow counties time to adopt zoning ordinances under G.S. 153A-340, as amended by Section 2.1 of this act; to allow time for the completion of the studies authorized by the 1995 General Assembly (1996 Second Extra Session); and to allow the 1999 General Assembly to receive and act on the findings and recommendations of those studies. Except as provided in subsection (b) of this section, the Environmental Management Commission shall not issue a permit for an animal waste management system for a new swine farm or the expansion of an existing swine farm for a period beginning on 1 March 1997 and ending on ~~1 March 1999.~~ 1 September 1999. The construction or

expansion of a swine farm or animal waste management system for a swine farm is prohibited during the period of the moratorium regardless of the date on which a site evaluation for the swine farm is completed and regardless of whether the animal waste management system is permitted under G.S. 143-215.1 or Part 1A of Article 21 of Chapter 143 of the General Statutes or deemed permitted under 15A North Carolina Administrative Code 2H.0217.

(b) Exceptions. -- The moratorium established by subsection ~~(a)~~ (a1) of this section does not prohibit:

- (1) Construction to repair a component of an existing swine farm or lagoon.
- (2) Construction to replace a component of an existing swine farm or lagoon if the replacement does not result in an increase in swine population, except as provided in subdivision (3) ~~or (7)~~ (7), or (8) of this subsection.
- (3) Construction or expansion for the purpose of increasing the swine population to the projected population or to the population that the animal waste management system serving that swine farm is designed to accommodate, as set forth in a certified animal waste management plan filed with the Department of Environment, Health, and Natural Resources prior to 1 March 1997.
- (4) Construction or expansion for the purpose of complying with applicable animal waste management rules and not for the purpose of increasing the swine population.
- (5) Construction or expansion, if the person undertaking the construction or expansion of the swine farm, lagoon, or animal waste management system has been issued a permit for that construction or expansion under G.S. 143-215.1 or Part 1A of Article 21 of Chapter 143 of the General Statutes prior to the date this act becomes effective.
- (6) Construction or expansion, if the person undertaking the construction or expansion of the swine farm, lagoon, or animal waste management system has, prior to 1 March 1997, either:
 - a. Laid a foundation for a component of the swine farm, lagoon, or animal waste management system.
 - b. Entered into a bona fide written contract for the construction or expansion of the swine farm, lagoon, or animal waste management system.
 - c. Been approved for a loan or line of credit to finance the construction or expansion of the swine farm, lagoon, or animal waste management system and has obligated or expended funds derived from the loan or line of credit.
- (7) Construction or expansion of an ~~innovative~~ animal waste management system that does not employ an anaerobic lagoon ~~and that has been approved by the Department of Environment, Health, and Natural Resources,~~ as the primary method of treatment, does not employ land application of waste except by injection into soil or by surface application if the injection or surface application meets the requirements of sub-subdivisions a. through e. of this

subdivision, and is designed to be the subject of a research project. The Environmental Management Commission shall issue a permit for the construction or expansion of an animal waste management system under this subdivision only if the Commission determines, after consultation with the Animal and Poultry Waste Management Center of North Carolina State University, that additional research is necessary to evaluate whether the animal waste treatment system will:

- a. Eliminate the discharge of animal waste to surface waters and groundwater through direct discharge, seepage, or runoff.
 - b. Substantially eliminate atmospheric emissions of ammonia.
 - c. Substantially eliminate the emission of odor that is detectable beyond the boundaries of the parcel or tract of land on which the swine farm is located.
 - d. Substantially eliminate the release of disease-transmitting vectors and airborne pathogens.
 - e. Substantially eliminate nutrient and heavy metal contamination of soil and groundwater.
- (8) Construction or expansion of an animal waste management system that does not employ an anaerobic lagoon as the primary method of treatment and does not employ land application of waste except by injection into soil or by surface application if the injection or surface application meets the requirements of sub-subdivisions a. through e. of this subdivision. The Environmental Management Commission may issue permits under this subdivision only in a manner consistent with G.S. 143-215.1(b)(2). The Commission shall issue a permit for the construction or expansion of an animal waste management system under this subdivision only if the Commission determines, after consultation with the Animal and Poultry Waste Management Center of North Carolina State University, that the animal waste management system has been in use on a swine farm with climatic conditions and soil characteristics that are similar to those that will be encountered at the proposed site of the swine farm for at least a year, that the animal waste management system has been evaluated for at least a year, and that sufficient data exists to establish that the animal waste management system will:
- a. Eliminate the discharge of animal waste to surface waters and groundwater through direct discharge, seepage, or runoff.
 - b. Substantially eliminate atmospheric emissions of ammonia.
 - c. Substantially eliminate the emission of odor that is detectable beyond the boundaries of the parcel or tract of land on which the swine farm is located.
 - d. Substantially eliminate the release of disease-transmitting vectors and airborne pathogens.
 - e. Substantially eliminate nutrient and heavy metal contamination of soil and groundwater.

(c) Establishing Eligibility for an Exemption. -- It shall be the responsibility of an applicant for a permit for an animal waste management

system for a new swine farm or for the expansion of an existing swine farm under subdivisions (1) through ~~(7)~~ (8) of subsection (b) of this section to provide information and documentation to the Department of Environment, Health, and Natural Resources that establishes, to the satisfaction of the Department, that the applicant is eligible for the permit. In demonstrating eligibility for a permit under this section, the burden of proof shall be on the applicant.

(d) Rule Making Not Required; Administrative and Judicial Review. -- Notwithstanding the provisions of Article 2A of Chapter 150B of the General Statutes, this section shall not be construed to obligate the Commission or the Department to adopt a temporary or permanent rule to implement this section. The Commission and the Department shall implement the provisions of this section by evaluating each application for a permit for an animal waste management system on a case-by-case basis. A decision of the Commission or the Department under this section is subject to administrative and judicial review as provided in Articles 3 and 4 of Chapter 150B of the General Statutes."

Section 3. Section 1.2 of S.L. 1997-458 reads as rewritten:

"Section 1.2. (a) As used in this section, 'swine farm' and 'lagoon' have the same meaning as in G.S. 106-802. As used in this section, 'animal waste management system' has the same meaning as in G.S. 143-215.10B. There is hereby established a moratorium for any new or expanding swine farm or lagoon for which a permit is required under Parts 1 or 1A of Chapter 143 of the General Statutes in any county in the State: (i) that has a population of less than 75,000 according to the most recent decennial federal census; (ii) in which there is more than one hundred fifty million dollars (\$150,000,000) of expenditures for travel and tourism based on the most recent figures of the Department of Commerce; and (iii) that is not in the coastal area as defined by G.S. 113A-103. Effective 1 January 1997, until ~~1 March 1999~~, 1 September 1999, the Environmental Management Commission shall not issue a permit for an animal waste management system, as defined in G.S. 143-215.10B, or for a new or expanded swine farm or lagoon, as defined in G.S. 106-802. The exemptions set out in subsection (b) of Section 1.1 of this act do not apply to the moratorium established under this section.

(b) In order to protect travel and tourism, effective ~~1 March 1999~~, 1 September 1999, no animal waste management system shall be permitted except under an individual permit issued under Part 1 of Article 21 of Chapter 143 of the General Statutes in any county in the State: (i) that has a population of less than 75,000 according to the most recent decennial federal census; (ii) in which there is more than one hundred fifty million dollars (\$150,000,000) of expenditures for travel and tourism based on the most recent figures of the Department of Commerce; and (iii) that is not in the coastal area as defined by G.S. 113A-103."

Section 4. Section 1 of this act becomes effective 1 January 1999. All other sections of this act become effective when this act becomes law.

In the General Assembly read three times and ratified this the 12th day of October, 1998.

Became law upon approval of the Governor at 9:22 a.m. on the 16th day of October, 1998.

H.B. 1357

SESSION LAW 1998-189

AN ACT TO PROVIDE FOR "BEST VALUE" INFORMATION TECHNOLOGY PROCUREMENTS.

The General Assembly of North Carolina enacts:

Section 1. Chapter 143 of the General Statutes is amended by adding a new section to read:

"§ 143-135.9. 'Best Value' information technology procurements.

(a) For purposes of this section:

- (1) 'Information technology' includes electronic data processing and telecommunications goods and services, microelectronics, software, information processing, office systems, any services related to the foregoing, and consulting or other services for design and/or redesign of business processes.
- (2) 'Best Value' procurement means the selection of a contractor based on a determination of which proposal offers the best trade-off between price and performance, where quality is considered an integral performance factor. The award decision is made based on multiple factors, including: total cost of ownership, meaning the cost of acquiring, operating, maintaining, and supporting a product or service over its projected lifetime; the evaluated technical merit of the vendor's proposal; the vendor's past performance; and the evaluated probability of performing the requirements stated in the solicitation on time, with high quality, and in a manner that accomplishes the stated business objectives and maintains industry standards compliance.
- (3) 'Solution-Based Solicitation' means a solicitation in which the requirements are stated in terms of how the product or service being purchased should accomplish the business objectives, rather than in terms of the technical design of the product or service.
- (4) 'Government-Vendor Partnership' means a mutually beneficial contractual relationship between State government and a contractor, wherein the two share risk and reward, and value is added to the procurement of complex technology.

(b) The intent of 'Best Value' Information Technology procurement is to enable contractors to offer and the agency to select the most appropriate solution to meet the business objectives defined in the solicitation and to keep all parties focused on the desired outcome of a procurement. Business process reengineering, system design, and technology implementation may be combined into a single solicitation.

(c) The acquisition of information technology by the State of North Carolina shall be conducted using the 'Best Value' procurement method. For acquisitions which the procuring agency and the Division of Purchase and Contracts deem to be highly complex or determine that the optimal solution to the business problem at hand is not known, the use of Solution-

Based Solicitation and Government-Vendor Partnership is authorized and encouraged."

Section 2. The Division of Purchase and Contracts shall develop and implement no later than December 31, 1998, policies and procedures to ensure the use of "Best Value" Procurement and, as applicable, Solution-Based Procurement and Government-Vendor Partnership in the procurement of information technology by State agencies.

Section 3. The Division of Purchase and Contracts and the Department of Commerce, Information Technology Services, shall jointly develop and implement no later than December 31, 1998, policies, procedures, and/or programs to ensure that agency and Division of Purchase and Contracts personnel involved in the development of solicitations, development of specifications, evaluation of proposals, selection of vendors, administration of contracts, and management of information technology projects receive high-quality training in the principles of "Best Value" Procurement, Solution-Based Procurement, Government-Vendor Partnership, contract administration, and project management.

Section 4. The Division of Purchase and Contract and the Department of Commerce, Information Technology Services, shall report to the Technology Committee of the House of Representatives and the comparable committee in the Senate on the results of the implementation of G.S. 143-135.9 at its first meeting during the 1999 Session of the General Assembly.

Section 5. Section 1 of this act becomes effective December 1, 1998. The remaining sections of this act are effective when this act becomes law.

In the General Assembly read three times and ratified this the 12th day of October, 1998.

Became law upon approval of the Governor at 9:00 a.m. on the 21st day of October, 1998.

S.B. 1138

SESSION LAW 1998-190

AN ACT TO ALLOW MEMBERS OF THE TEACHERS' AND STATE EMPLOYEES' RETIREMENT SYSTEM TO PURCHASE CREDIT FOR PROBATIONARY EMPLOYMENT WITH A LOCAL GOVERNMENT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 135-4 is amended by adding a new subsection to read:

"(bb) Credit at Full Cost for Probationary Local Government Employment. -- Notwithstanding any other provision of this Chapter, a member may purchase creditable service, prior to retirement, for employment with any local employer as defined in G.S. 128-21(11) when considered to be in a probationary or employer-imposed waiting period status, between the date of employment and the date of membership service with the Local Governmental Employees' Retirement System, provided that the former employer of such a member has revoked this probationary employment or waiting period policy.

The member shall purchase this service by making a lump-sum amount payable to the Annuity Savings Fund equal to the full liability of the service credits calculated on the basis of the assumptions used for purposes of the actuarial valuation of the liabilities of the retirement system, and the calculation of the amount payable shall take into account the retirement allowance arising on account of the additional service credit commencing at the earliest age at which the member could retire on an unreduced retirement allowance, as determined by the Board of Trustees upon the advice of the consulting actuary, plus an administrative fee to be set by the Board of Trustees. Notwithstanding the provisions of this subsection that provide for the purchase of service credits, the term 'full liability' includes assumed annual postretirement allowance increases, as determined by the Board of Trustees, from the earliest age at which a member could retire on an unreduced service allowance."

Section 2. This act becomes effective July 1, 1998.

In the General Assembly read three times and ratified this the 12th day of October, 1998.

Became law upon approval of the Governor at 9:02 a.m. on the 21st day of October, 1998.

H.B. 1248

SESSION LAW 1998-191

AN ACT TO PROTECT NORTH CAROLINA CITIZENS FROM LOSSES DUE TO FEDERAL TOBACCO LEGISLATION OR TOBACCO LITIGATION AND TO PROVIDE THAT FUNDS RECEIVED DUE TO TOBACCO SETTLEMENTS AND RELATED CONGRESSIONAL LEGISLATION SHALL BE SPENT PURSUANT TO APPROPRIATION BY THE GENERAL ASSEMBLY.

The General Assembly of North Carolina enacts:

Section 1. The General Assembly finds that:

- (1) In June 1997, a tentative settlement was reached in litigation between United States cigarette manufacturers and the attorneys general of 40 states.
- (2) Dozens of bills were introduced in Congress dealing with this settlement, and several of those bills would have provided financial assistance to tobacco farmers and others who depend on tobacco for their livelihoods.
- (3) Some of these proposed bills would also have provided for block grants and other funds for states to use for related purposes.
- (4) Congress is unlikely to enact legislation on this subject during 1998.
- (5) Tobacco litigation and federal legislation providing for settlement of the litigation have the potential to affect the interests of tobacco farmers and others who depend on tobacco for their livelihoods.

Section 2. Article 1 of Chapter 143 of the General Statutes is amended by adding a new section to read:

"§ 143-16.4. Settlement Reserve Fund.

(a) The 'Settlement Reserve Fund' is established as a restricted reserve in the General Fund. Funds shall be expended from the Settlement Reserve Fund only by specific appropriation by the General Assembly.

(b) Unless prohibited by federal law, federal funds provided to the State by block grant or otherwise as part of federal legislation implementing a settlement between United States tobacco companies and the states shall be credited to the Settlement Reserve Fund. Unless otherwise encumbered or distributed under a settlement agreement or final order or judgment of the court, funds paid to the State or a State agency pursuant to a tobacco litigation settlement agreement, or a final order or judgment of a court in litigation between tobacco companies and the states, shall be credited to the Settlement Reserve Fund."

Section 3. It is the intent of the General Assembly to enact appropriate tax relief for financial assistance payments that may later be enacted by Congress for tobacco farmers and for others who depend on tobacco for their livelihoods. In addition, it is the intent of the General Assembly to monitor the status of tobacco litigation in this State and other states and to act to protect the interests of North Carolina tobacco farmers and other North Carolina citizens who depend on tobacco for their livelihoods.

Section 4. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 15th day of October, 1998.

Became law upon approval of the Governor at 5:30 p.m. on the 21st day of October, 1998.

H.B. 1114

SESSION LAW 1998-192

AN ACT PROVIDING THAT CERTAIN LOCAL GOVERNMENTS MAINTAIN THE SWIFT CREEK MANAGEMENT PLAN AS AGREED TO BY THOSE JURISDICTIONS.

The General Assembly of North Carolina enacts:

Whereas, in January 1988, the late Mayor Avery Upchurch of Raleigh invited chief elected officials of the Swift Creek area to meet to discuss the development of a coordinated land-use plan for the area; and

Whereas, the able efforts of elected officials and technical staff of the County of Wake, the City of Raleigh, and the Towns of Apex, Cary, and Garner resulted in the development of the Swift Creek Management Plan in September 1988; and

Whereas, the various local governments having jurisdiction over the area have approved the Swift Creek Management Plan through appropriate action of their respective governing bodies; and

Whereas, the General Assembly finds that it is in the best interest of the citizens of the Swift Creek area and the various local governments to maintain the Swift Creek Management Plan as agreed to by those jurisdictions; Now, therefore,

Section 1. (a) A jurisdiction affected by this act shall not adopt any ordinance authorized by Article 18 of Chapter 153A of the General Statutes, Article 19 of Chapter 160A of the General Statutes, or under any local act or charter provision relating to the subject of those Articles, nor grant any permit or approval pursuant to those ordinances, that would be inconsistent with the standards and provisions of the Swift Creek Management Plan.

(b) This act applies to any zoning map amendment and to any other zoning amendment, modification, repeal, or change in zoning regulations and restrictions or zone boundaries relating to the area set forth in the Swift Creek Management Plan, but shall not be construed to prevent any jurisdiction subject to its provisions from adopting zoning ordinance text changes.

(c) This act shall not affect any valid and unexpired vested right of any landowner arising by law pursuant to G.S. 153A-344.1 or G.S. 160A-385.1, nor shall this act affect the right of any person to protest zoning changes or otherwise appeal planning, subdivision, or zoning actions as provided by Article 18 of Chapter 153A of the General Statutes, or Article 19 of Chapter 160A of the General Statutes, or by local ordinance.

Section 2. If a jurisdiction affected by this act has an ordinance to effectuate the recommended minimum performance standards for the Swift Creek watershed and the other specific features set forth in the Swift Creek Management Plan, then the jurisdiction may modify its zoning ordinance to further meet or exceed the requirements of the Swift Creek Management Plan. The Swift Creek Management Plan may be modified by interlocal agreement pursuant to Article 20 of Chapter 160A of the General Statutes entered into by all of the affected jurisdictions.

Section 3. The jurisdictions affected by this act may extend utilities unilaterally to any portion of their respective jurisdictions subject to the Swift Creek Management Plan provided that, prior to the effective date of this act, the municipalities zoned or rezoned the subject area in anticipation of providing utilities to the area.

Section 4. (a) The qualified resident voters of the area described in the Swift Creek Management Plan shall be given the opportunity to vote in a nonbinding advisory referendum on incorporation of the Swift Creek area as a municipality. The question to be used in the voting systems and ballots shall be:

"[] FOR [] AGAINST

Incorporation of the Swift Creek area as a municipality, along with the payment of additional property taxes which the proposed municipality may levy."

(b) Registration for the election shall be conducted in accordance with G.S. 163-288.2. The referendum shall be conducted on November 7, 2000.

Section 5. This act applies only to the County of Wake, the City of Raleigh, and the Towns of Apex, Cary, and Garner.

Section 6. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 22nd day of October, 1998.

Became law on the date it was ratified.

S.B. 656

SESSION LAW 1998-193

AN ACT TO MODIFY THE HIGH-VOLTAGE LINE SAFETY ACT AND
TO AMEND THE LAW ON PROJECT EXPEDITERS ON PUBLIC
CONTRACTS.

The General Assembly of North Carolina enacts:

PROJECT EXPEDITER ON PUBLIC CONTRACTS

Section 1. G.S. 143-128(e) reads as rewritten:

"(e) Project expediter; ~~scheduling~~; scheduling; public body to resolve project disputes. -- The State, county, municipality, or other public body may, if specified in the bid documents, provide for assignment of responsibility for expediting the work on the project to a single responsible and reliable person, firm or corporation, which may be a prime contractor. In executing this responsibility, the designated project expediter may recommend to the State, county, municipality, or other public body whether payment to a contractor should be approved. The project expediter, if required by the contract documents, shall be responsible for the preparation of the project schedule and shall allow all contractors and subcontractors performing any of the branches of work listed in subsection (d) of this section equal input into the preparation of the initial schedule. Whenever separate contracts are awarded and separate contractors engaged for a project pursuant to this section, the public body may provide in the contract documents for resolution of project disputes through alternative dispute resolution processes such as mediation or arbitration."

AMEND VOLTAGE SAFETY ACT

Section 2. G.S. 95-229.6(4) reads as rewritten:

"(4) 'Person responsible for the work to be done' means the person performing or controlling the ~~job~~ work that necessitates the precautionary safety measures required by this ~~Article~~. Article, unless the person performing or controlling the work is under contract or agreement with a governmental entity, in which case 'person responsible for the work to be done' means that governmental entity."

Section 3. G.S. 95-229.7(a) reads as rewritten:

"(a) Unless danger of contact with high-voltage lines has been guarded against as provided by G.S. 95-229.8, 95-229.9, and 95-229.10, the following actions are prohibited:

- (1) No person shall, individually or through an agent or employee, perform, or require any other person to perform, any work upon any land, building, highway, or other premises that will cause:
 - a. Such individual, agent, employee, or other person to be placed within six feet of any overhead high-voltage line; or any part of any tool or material used by the agent, employee, or other person to be brought within six feet of any overhead high-voltage line, or

- b. Any part of any covered equipment or covered item used by the individual, agent, employee, or other person to be brought within 10 feet of any high-voltage line.
- (2) No person shall, individually or through an agent or employee or as an agent or employee, erect, construct, operate, maintain, transport, or store any covered equipment or covered item within 10 feet of any high-voltage line, or such greater clearance as may be required under the circumstances by OSHA, except as provided herein. This prohibition shall not apply, however, to covered equipment as defined herein when lawfully driven or transported on public streets and highways in compliance with applicable height restrictions. The required clearance from high-voltage lines shall be not less than four feet when:
 - a. Covered equipment as defined herein is lawfully driven or transported on public streets and highways in compliance with the height restriction applicable thereto,
 - b. Refuse collection equipment is operating, or
 - c. Agricultural equipment is operating.
- (3) No person shall, individually or through an agent or employee or as an agent or employee, operate or cause to be operated an airplane or helicopter within 20 feet of a high-voltage line, except that no clearance is specified for licensed aerial applicators that may incidentally pass within the 20-foot limitation during normal operation.
- (4) No person shall, individually or through an agent or employee or as an agent or employee, store or cause to be stored any materials that are expected to be moved or handled by covered equipment or any covered item within 10 feet of a high-voltage line.
- (5) No person shall, individually or through an agent or employee or as an agent or employee, provide or cause to be provided additional clearance by either (i) raising, moving, or displacing any overhead utility ~~electric lines of any type or nature including high-voltage, low-voltage, telephone, cable television, fire alarm, or other lines~~ or (ii) pulling or pushing any pole, guy, or other structural appurtenance.
- (6) No person shall, individually or through an agent or employee or as an agent or employee, excavate or cause to be excavated any portion of any foundations of structures, including guy anchors or other structural appurtenances, which support any overhead utility ~~electric lines of any type or nature, including high-voltage, low-voltage, telephone, cable television, fire alarm, or other lines."~~

Section 4. G.S. 95-229.8(a) reads as rewritten:

"(a) No person shall, individually or through an agent or employee or as an agent or employee, operate any covered equipment in the proximity of a high-voltage line unless warning signs are posted and maintained as follows:

- (1) A sign shall be located within the equipment and readily visible and legible to the operator of such equipment when at the controls of such equipment; and

- (2) Signs shall be located on the outside of equipment so as to be readily visible and legible at 12 feet to other persons engaged in the work operations.

This subsection shall not apply to handheld ~~tools and tools~~, handheld ~~equipment equipment~~, and other items which by their size or configuration cannot accommodate the warning signs specified in G.S. 95-229.6(5)."

EFFECTIVE DATE

Section 5. This act becomes effective January 1, 1999. Section 2 of this act applies to contracts entered into on or after that date.

In the General Assembly read three times and ratified this the 15th day of October, 1998.

Became law upon approval of the Governor at 2:02 p.m. on the 24th day of October, 1998.

H.B. 1371

SESSION LAW 1998-194

AN ACT TO IMPLEMENT THE RECOMMENDATION OF THE JOINT LEGISLATIVE EDUCATION OVERSIGHT COMMITTEE TO INCREASE PURCHASING FLEXIBILITY FOR ALL PUBLIC SCHOOLS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 115C-522.1 reads as rewritten:

"§ 115C-522.1. ~~Pilot program for provision of equipment from other sources. Purchasing flexibility.~~

(a) ~~The State Board of Education shall develop and implement a pilot program allowing selected local school administrative units to purchase supplies, equipment, and materials from noncertified sources. In developing the program, the State Board shall collaborate with the Department of Administration on establishing standards, specifications, and any other measures necessary to implement and evaluate the pilot program. The State Board shall initially select twelve (12) local school administrative units that are diverse in geography and size to participate in the pilot program. If the State Board thereafter determines that the pilot program is effective, efficient, and in the best interest of the public schools, the State Board shall have the authority to expand the pilot program to additional local school administrative units.~~

(b) ~~Local school administrative units participating in the pilot program shall have the authority to purchase the same supplies, equipment, and materials from noncertified sources as are available under State term contracts, subject to the following conditions:~~

- (1) The purchase price, including the cost of delivery, is less than the cost under the State term contract;

- (1a) The items are the same or substantially similar in quality, service, and performance as items available under State term contracts;

- (2) The cost of the purchase shall not exceed the bid value benchmark established under G.S. 143-53.1;

- (3) The local school administrative unit ~~documents in writing maintains written documentation of the cost savings; and~~
- (4) ~~The local school administrative unit shall provide annually by August 15 an itemized report of the cost savings to the State Board of Education.~~
- (5) The local school administrative unit notifies the Department of Administration of any purchases of items it made that are substantially equivalent to and not the same as items under State term contracts.

(c) The requirements listed in subsection (b) of this section shall not apply to purchases from noncertified sources that fall below the economic ordering quantity of a State term contract.

(d) ~~The State Board of Education shall provide to the~~ Upon the request of the Department of Administration Administration, copies of the itemized annual reports produced by the local school administrative units participating in the pilot program. The State Board shall evaluate the information provided by the participating units and shall report its findings and recommendations to the Joint Legislative Education Oversight Committee by October 1, 1997, and annually thereafter. a local school administrative unit shall provide the written documentation of cost savings required under subdivision (3) of subsection (b) of this section.

(e) The State Board shall adopt rules to exempt from this section supplies, equipment, and materials related to student transportation. The State Board shall adopt guidelines regarding the interpretation and implementation of this section."

Section 2. G.S. 115C-522(a) reads as rewritten:

"§ 115C-522. *Provision of equipment for buildings.*

(a) ~~It~~ Except as provided in G.S. 115C-522.1, it shall be the duty of local boards of education to purchase or exchange all supplies, equipment and materials in accordance with contracts made by or with the approval of the Department of Administration. Title to instructional supplies, office supplies, fuel and janitorial supplies, enumerated in the current expense fund budget and purchased out of State funds, shall be taken in the name of the local board of education which shall be responsible for the custody and replacement: Provided, that no contracts shall be made by any local school administrative unit for purchases unless provision has been made in the budget of the unit to pay for the purchases, unless surplus funds are on hand to pay for the purchases, or unless the contracts are made pursuant to G.S. 115C-47(28) and G.S. 115C-528 and adequate funds are available to pay in the current fiscal year the sums obligated for the current fiscal year, and in order to protect the State purchase contractor, it is made the duty of the governing authorities of the local units to pay for these purchases promptly and in accordance with the terms of the contract of purchase."

Section 3. G.S. 115C-47(23) reads as rewritten:

"(23) To Purchase Equipment and Supplies. -- Local boards shall contract for equipment and supplies ~~pursuant to the provisions of under G.S. 115C-522(a)~~ 115C-522(a), 115C-522.1, and 115C-528."

Section 4. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 15th day of October, 1998.

Became law upon approval of the Governor at 2:06 p.m. on the 24th day of October, 1998.

S.B. 1202

SESSION LAW 1998-195**AN ACT TO AUTHORIZE COUNTY CONVEYANCE OF SURPLUS AUTOMOBILES TO A NOT-FOR-PROFIT RECIPIENT FOR SUBSEQUENT CONVEYANCE TO WORK FIRST PARTICIPANTS.**

The General Assembly of North Carolina enacts:

Section 1. G.S. 160A-279(a) reads as rewritten:

"(a) Whenever a city or county is authorized to appropriate funds to any public or private entity which carries out a public purpose, the city or county may, in lieu of or in addition to the appropriation of funds, convey by private sale to such an entity any real or personal property which it owns; provided no property acquired by the exercise of eminent domain may be conveyed under this section; provided that no such conveyance may be made to a for-profit corporation. The city or county shall attach to any such conveyance covenants or conditions which assure that the property will be put to a public use by the recipient entity. The procedural provisions of G.S. 160A-267 shall apply. Provided, however, that a city or county may convey to any public or private entity, which is authorized to receive appropriations from a city or county, surplus automobiles without compensation or without the requirement that the automobiles be used for a public purpose. Provided, however, this conveyance is conditioned upon conveyance by the public or private entity to Work First participants selected by the county department of social services under the rules adopted by the local department of social services. In the discretion of the public or private entity to which the city or county conveys the surplus automobile, when that entity conveys the vehicle to a Work First participant it may arrange for an appropriate security interest in the vehicle, including a lien or lease, until such time as the Work First participant satisfactorily completes the requirements of the Work First program. This subsequent conveyance by the public or private entity to the Work First participant may be without compensation. The participant may be required to pay for license, tag, and/or title."

Section 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 15th day of October, 1998.

Became law upon approval of the Governor at 2:08 p.m. on the 24th day of October, 1998.

S.B. 333

SESSION LAW 1998-196**AN ACT TO AMEND THE LAW GOVERNING THE PROCEDURE FOR ENTRY OF ORDERS IN THE COMMODITIES ACT.**

The General Assembly of North Carolina enacts:

Section 1. G.S. 78D-30(d) reads as rewritten:

"(d) If no ~~hearing is requested~~ request for a hearing, other responsive pleading, or submission is received by the Administrator within 30 business days of receipt of service of notice of summary order under subsection (b) of this section and ~~none~~ no hearing is ordered by the Administrator, the summary order will automatically become a final order after 30 business days. days from the date service of the notice of summary order was received."

Section 2. This act becomes effective January 1, 1999, and applies to administrative proceedings commenced on or after that date.

In the General Assembly read three times and ratified this the 14th day of October, 1998.

Became law upon approval of the Governor at 2:10 p.m. on the 24th day of October, 1998.

H.B. 1126

SESSION LAW 1998-197

AN ACT TO EXEMPT LOCAL PAY PHONE SERVICES FROM SALES TAX.

The General Assembly of North Carolina enacts:

Section 1. G. S. 105-164.4(a)(4a), as amended by S.L. 1998-22, reads as rewritten:

"(4a) *The rate of three percent (3%) applies to the gross receipts derived by a utility from sales of electricity or local telecommunications service as defined by G.S. 105-120(e), other than sales of electricity subject to tax under another subdivision in this section. Gross receipts from sales of local telecommunications service do not include receipts from service provided by means of public coin-operated pay telephone instruments and paid for by coin. A person who operates a utility is considered a retailer under this Article.*"

Section 2. This act becomes effective January 1, 2000, and applies to sales made on or after that date.

In the General Assembly read three times and ratified this the 14th day of October, 1998.

Became law upon approval of the Governor at 2:00 p.m. on the 24th day of October, 1998.

S.B. 1287

SESSION LAW 1998-198

AN ACT TO CLARIFY THE LAW REGARDING HEALTH CARE POWERS OF ATTORNEY AND ADVANCE INSTRUCTION FOR MENTAL HEALTH TREATMENT BASED ON RECOMMENDATIONS OF THE JOINT LEGISLATIVE HEALTH CARE OVERSIGHT COMMITTEE.

The General Assembly of North Carolina enacts:

Section 1. Article 3 of Chapter 32A reads as rewritten:

"ARTICLE 3.

"Health Care Powers of Attorney.

"§ 32A-15. General purpose of this Article.

(a) The General Assembly recognizes as a matter of public policy the fundamental right of an individual to control the decisions relating to his or her medical care, and that this right may be exercised on behalf of the individual by an agent chosen by the individual.

(b) The purpose of this Article is to establish an additional, nonexclusive method for an individual to exercise his or her right to give, withhold, or withdraw consent to medical ~~treatment~~ treatment, including mental health treatment, when the individual lacks sufficient understanding or capacity to make or communicate health care decisions.

(c) This Article is intended and shall be construed to be consistent with the provisions of Article 23 of Chapter 90 of the General Statutes provided that in the event of a conflict between the provisions of this Article and Article 23 of Chapter 90, the provisions of Article 23 of Chapter 90 control. If no declaration has been executed by the principal as provided in G.S. 90-321 that expressly covers the principal's present condition and if the health care agent has been given the specific authority in a health care power of attorney to authorize the withholding or discontinuing of life-sustaining procedures when the principal is in the present condition, these procedures may be withheld or discontinued as provided in the health care power of attorney upon the direction and under the supervision of the attending physician. In this case, G.S. 90-322 does not apply.

(d) This Article is intended and shall be construed to be consistent with the provisions of Part 3 of Article 16 of Chapter 130A of the General Statutes. In the event of a conflict between the provisions of this Article and Part 3 of Article 16 of Chapter 130A, the provisions of Part 3 of Article 16 of Chapter 130A control.

"§ 32A-16. Definitions.

As used in this Article, unless the context clearly requires otherwise, the following terms have the meanings specified:

- (1) 'Health care' means any care, treatment, service, or procedure to maintain, diagnose, treat, or provide for the principal's physical or mental health or personal care and comfort including, life-sustaining procedures. 'Health care' includes mental health treatment as defined in subdivision (8) of this section.
- (2) 'Health care agent' means the person appointed as a health care attorney-in-fact.
- (3) 'Health care power of attorney' means a written instrument, signed in the presence of two qualified witnesses, and acknowledged before a notary public, pursuant to which an attorney-in-fact or agent is appointed to act for the principal in matters relating to the health care of the principal, and which substantially meets the requirements of this Article.
- (4) 'Life-sustaining procedures' are those forms of care or treatment which only serve to artificially prolong the dying process and may include mechanical ventilation, dialysis, antibiotics, artificial

nutrition and hydration, and other forms of treatment which sustain, restore or supplant vital bodily functions, but do not include care necessary to provide comfort or to alleviate pain.

- (5) 'Principal' means the person making the health care power of attorney.
- (6) 'Qualified witness' means a witness in whose presence the principal has executed the health care power of attorney, who believes the principal to be of sound mind, and who states that he (i) is not related within the third degree to the principal nor to the principal's spouse, (ii) does not know nor have a reasonable expectation that he would be entitled to any portion of the estate of the principal upon the principal's death under any existing will or codicil of the principal or under the Intestate Succession Act as it then provides, (iii) is not the attending physician or mental health treatment provider of the principal, nor an employee of the ~~attending physician, physician or mental health treatment provider,~~ nor an employee of a health facility in which the principal is a patient, nor an employee of a nursing home or any group-care home in which the principal resides, and (iv) does not have a claim against any portion of the estate of the principal at the time of the principal's execution of the health care power of attorney.
- (7) 'Advance instruction for mental health treatment' or 'advance instruction' means a written instrument as defined in G.S. 122C-72(1) pursuant to which the principal makes a declaration of instructions, information, and preferences regarding mental health treatment.
- (8) 'Mental health treatment' means the process of providing for the physical, emotional, psychological, and social needs of the principal for the principal's mental illness. 'Mental health treatment' includes, but is not limited to, electroconvulsive treatment, treatment of mental illness with psychotropic medication, and admission to and retention in a facility for care or treatment of mental illness.

"§ 32A-17. *Who may make a health care power of attorney.*

Any person having understanding and capacity to make and communicate health care decisions, who is 18 years of age or older, may make a health care power of attorney.

"§ 32A-18. *Who may act as a health care attorney-in-fact.*

Any competent person who is not engaged in providing health care to the principal for remuneration, and who is 18 years of age or older, may act as a health care agent.

"§ 32A-19. *Extent of authority; limitations of authority.*

(a) A principal, pursuant to a health care power of attorney, may grant to the health care agent full power and authority to make health care decisions to the same extent that the principal could make those decisions for himself or herself if he or she had understanding and capacity to make and communicate health care decisions, including without limitation, the power to authorize withholding or discontinuing life-sustaining ~~procedures,~~ procedures and the power to authorize the giving or withholding of mental

health treatment. A health care power of attorney may also contain or incorporate by reference any lawful guidelines or directions relating to the health care of the principal as the principal deems appropriate.

(b) A health care power of attorney may incorporate or be combined with an advance instruction for mental health treatment prepared pursuant to Part 2 of Article 3 of Chapter 122C of the General Statutes. A health care agent's decisions about mental health treatment shall be consistent with any statements the principal has expressed in an advance instruction for mental health treatment if one so exists, and if none exists, shall be consistent with what the agent believes in good faith to be the manner in which the principal would act if the principal did not lack sufficient understanding or capacity to make or communicate health care decisions. A health care agent is not subject to criminal prosecution, civil liability, or professional disciplinary action for any action taken in good faith pursuant to an advance instruction for mental health treatment.

(b) (c) A health care power of attorney may authorize the health care agent to exercise any and all rights the principal may have with respect to anatomical gifts, the authorization of any autopsy, and the disposition of remains.

(c) (d) A health care power of attorney may contain, and the authority of the health care agent shall be subject to, the specific limitations or restrictions as the principal deems appropriate.

(d) (e) The powers and authority granted to the health care agent pursuant to a health care power of attorney shall be limited to the matters addressed in it, and, except as necessary to exercise such powers and authority relating to health care, shall not confer any power or authority with respect to the property or financial affairs of the principal.

(e) (f) This Article shall not be construed to invalidate a power of attorney that authorizes an agent to make health care decisions for the principal, which was executed prior to October 1, 1991.

(g) A health care power of attorney does not limit any authority in Article 5 of Chapter 122C of the General Statutes either to take a person into custody or to admit, retain, or treat a person in a facility.

"§ 32A-20. Effectiveness and duration; revocation.

(a) A health care power of attorney shall become effective when and if the physician or physicians or, in the case of mental health treatment, physician or eligible psychologist as defined in G.S. 122C-3(13d), designated by the principal determine in writing that the principal lacks sufficient understanding or capacity to make or communicate decisions relating to the health care of the principal, and shall continue in effect during the incapacity of the principal. The determination shall be made by the principal's attending physician or eligible psychologist if the physician or physicians or eligible psychologist designated by the principal is unavailable or is otherwise unable or unwilling to make this determination or if the principal failed to designate a physician or physicians or eligible psychologist to make this determination. A health care power of attorney may include a provision that, if the principal does not designate a physician for reasons based on his religious or moral beliefs as specified in the health care power of attorney, a person designated by the principal in the health care power of

attorney may certify in writing, acknowledged before a notary public, that the principal lacks sufficient understanding or capacity to make or communicate decisions relating to his health care. The person so designated must be a competent person 18 years of age or older, not engaged in providing health care to the principal for remuneration, and must be a person other than the health care agent.

(b) A health care power of attorney is revoked by the death of the principal. A health care power of attorney may be revoked by the principal at any time, so long as the principal is capable of making and communicating health care decisions. The principal may exercise this right of revocation by executing and acknowledging an instrument of revocation, by executing and acknowledging a subsequent health care power of attorney, or in any other manner by which the principal is able to communicate an intent to revoke. This revocation becomes effective only upon communication by the principal to each health care agent named in the revoked health care power of attorney and to the principal's attending ~~physician, physician or eligible psychologist.~~

(c) The authority of a health care agent who is the spouse of the principal shall be revoked upon the entry by a court of a decree of divorce or separation between the principal and the health care agent; provided that if the health care power of attorney designates a successor health care agent, the successor shall serve as the health care agent, and the health care power of attorney shall not be revoked.

"§ 32A-21. *Appointment, resignation, removal, and substitution.*

(a) A health care power of attorney may contain provisions relating to the appointment, resignation, removal and substitution of the health care agent.

(b) If all health care agents named in the instrument or substituted, die or for any reason fail or refuse to act, and all methods of substitution have been exhausted, the health care power of attorney shall cease to be effective.

"§ 32A-22. *Relation of the health care agent to a court-appointed fiduciary and to a general attorney-in-fact.*

(a) If, following the execution of a health care power of attorney, a court of competent jurisdiction appoints a guardian of the person of the principal, or a general guardian with powers over the person of the principal, the health care power of attorney shall cease to be effective upon the appointment and qualification of the guardian. The guardian shall act consistently with G.S. 35A-1201(a)(5).

(b) A principal may nominate, by a health care power of attorney, the guardian of the person of the principal if a guardianship proceeding is thereafter commenced. The court shall make its appointment in accordance with the principal's most recent nomination in an unrevoked health care power of attorney, except for good cause shown.

(c) The execution of a health care power of attorney shall not revoke, restrict or otherwise affect any nonhealth care powers granted by the principal to an attorney-in-fact pursuant to a general power of attorney; provided that the powers granted to the health care agent with respect to health care matters shall be superior to any similar powers granted by the principal to an attorney-in-fact under a general power of attorney.

(d) A health care power of attorney may be combined with or incorporated into a general power of attorney which is executed in accordance with the requirements of this Article.

"§ 32A-23. *Article 2, Chapter 32A, not applicable.*

The provisions of Article 2 of this Chapter shall not be applicable to a health care power of attorney executed pursuant to this Article.

"§ 32A-24. *Reliance on health care power of attorney; defense.*

(a) Any physician or other health care provider involved in the medical care of the principal may rely upon the authority of the health care agent contained in a signed and acknowledged health care power of attorney in the absence of actual knowledge of revocation of the health care power of attorney.

(b) All health care decisions made by a health care agent pursuant to a health care power of attorney during any period following a determination that the principal lacks understanding or capacity to make or communicate health care decisions shall have the same effect as if the principal were not incapacitated and were present and acting on his or her own behalf. Any health care provider relying in good faith on the authority of a health care agent shall be protected to the full extent of the power conferred upon the health care agent, and no person so relying on the authority of the health care agent shall be liable, by reason of his reliance, for actions taken pursuant to a decision of the health care agent.

(c) The withholding or withdrawal of life-sustaining procedures by or under the orders of a physician pursuant to the authorization of a health care agent shall not be considered suicide or the cause of death for any civil or criminal purpose nor shall it be considered unprofessional conduct or a lack of professional competence. Any person, institution or facility, including without limitation the health care agent and the attending physician, against whom criminal or civil liability is asserted because of conduct described in this section, may interpose this section as a defense.

"§ 32A-25. *Statutory form health care power of attorney.*

The use of the following form in the creation of a health care power of attorney is lawful and, when used, it shall meet the requirements of and be construed in accordance with the provisions of this Article:

'HEALTH CARE POWER OF ATTORNEY

(Notice: This document gives the person you designate your health care agent broad powers to make health care ~~decisions~~ decisions, including mental health treatment decisions, for you, you. Except to the extent that you express specific limitations or restrictions on the authority of your health care agent, this power includes ~~including~~ the power to consent to your doctor not giving treatment or stopping treatment necessary to keep you ~~alive-~~ alive, admit you to a facility, and administer certain treatments and medications. This power exists only as to those health care decisions for which you are unable to give informed consent.

This form does not impose a duty on your health care agent to exercise granted powers, but when a power is exercised, your health care agent will have to use due care to act in your best interests and in accordance with this document. For mental health treatment decisions, your health care agent will

act according to how the health care agent believes you would act if you were making the decision. Because the powers granted by this document are broad and sweeping, you should discuss your wishes concerning life-sustaining ~~procedures~~ procedures, mental health treatment, and other health care decisions with your health care agent.

Use of this form in the creation of a health care power of attorney is lawful and is authorized pursuant to North Carolina law. However, use of this form is an optional and nonexclusive method for creating a health care power of attorney and North Carolina law does not bar the use of any other or different form of power of attorney for health care that meets the statutory requirements.)

1. Designation of health care agent.

I,....., being of sound mind, hereby appoint

Name:.....

Home Address:.....

Home Telephone Number.....Work Telephone Number.....

as my health care attorney-in-fact (herein referred to as my "health care agent") to act for me and in my name (in any way I could act in person) to make health care decisions for me as authorized in this document.

If the person named as my health care agent is not reasonably available or is unable or unwilling to act as my agent, then I appoint the following persons (each to act alone and successively, in the order named), to serve in that capacity: (Optional)

A. Name:.....

Home Address:.....

Home Telephone Number.....Work Telephone Number.....

B. Name:.....

Home Address:.....

Home Telephone Number.....Work Telephone Number.....

Each successor health care agent designated shall be vested with the same power and duties as if originally named as my health care agent.

2. Effectiveness of appointment.

(Notice: This health care power of attorney may be revoked by you at any time in any manner by which you are able to communicate your intent to revoke to your health care agent and your attending physician.)

Absent revocation, the authority granted in this document shall become effective when and if the physician or physicians designated below determine that I lack sufficient understanding or capacity to make or communicate decisions relating to my health care and will continue in effect during my incapacity, until my death. This determination shall be made by the following physician or ~~physicians~~ physicians. For decisions related to mental health treatment, this determination shall be made by the following physician or eligible psychologist. (You may include here a designation of your choice, including your attending ~~physician~~, physician or eligible psychologist, or any other ~~physician~~, physician or eligible psychologist. You may also name two or more ~~physicians~~, physicians or eligible

psychologists, if desired, both of whom must make this determination before the authority granted to the health care agent becomes effective.):

.....
.....
.....

3. General statement of authority granted.

Except as indicated in section 4 below, I hereby grant to my health care agent named above full power and authority to make health care ~~decisions~~ decisions, including mental health treatment decisions, on my behalf, including, but not limited to, the following:

- A. To request, review, and receive any information, verbal or written, regarding my physical or mental health, including, but not limited to, medical and hospital records, and to consent to the disclosure of this information.
- B. To employ or discharge my health care providers.
- C. To consent to and authorize my admission to and discharge from a hospital, nursing or convalescent home, or other institution.
- D. To consent to and authorize my admission to and retention in a facility for the care or treatment of mental illness.
- E. To consent to and authorize the administration of medications for mental health treatment and electroconvulsive treatment (ECT) commonly referred to as "shock treatment".
- ~~D.~~ F. To give consent for, to withdraw consent for, or to withhold consent for, X ray, anesthesia, medication, surgery, and all other diagnostic and treatment procedures ordered by or under the authorization of a licensed physician, dentist, or podiatrist. This authorization specifically includes the power to consent to measures for relief of pain.
- ~~E.~~ G. To authorize the withholding or withdrawal of life-sustaining procedures when and if my physician determines that I am terminally ill, permanently in a coma, suffer severe dementia, or am in a persistent vegetative state. Life-sustaining procedures are those forms of medical care that only serve to artificially prolong the dying process and may include mechanical ventilation, dialysis, antibiotics, artificial nutrition and hydration, and other forms of medical treatment which sustain, restore or supplant vital bodily functions. Life-sustaining procedures do not include care necessary to provide comfort or alleviate pain.

I DESIRE THAT MY LIFE NOT BE PROLONGED BY LIFE-SUSTAINING PROCEDURES IF I AM TERMINALLY ILL, PERMANENTLY IN A COMA, SUFFER SEVERE DEMENTIA, OR AM IN A PERSISTENT VEGETATIVE STATE.

- ~~F.~~ H. To exercise any right I may have to make a disposition of any part or all of my body for medical purposes, to donate my organs, to authorize an autopsy, and to direct the disposition of my remains.

G. I. To take any lawful actions that may be necessary to carry out these decisions, including the granting of releases of liability to medical providers.

4. Special provisions and limitations.

(Notice: The above grant of power is intended to be as broad as possible so that your health care agent will have authority to make any decisions you could make to obtain or terminate any type of health care. If you wish to limit the scope of your health care agent's powers, you may do so in this section.)

A. In exercising the authority to make health care decisions on my behalf, the authority of my health care agent is subject to the following special provisions and limitations (Here you may include any specific limitations you deem appropriate such as: your own definition of when life-sustaining treatment should be withheld or discontinued, or instructions to refuse any specific types of treatment that are inconsistent with your religious beliefs, or unacceptable to you for any other reason.):

.....
.....
.....
.....

B. In exercising the authority to make mental health decisions on my behalf, the authority of my health care agent is subject to the following special provisions and limitations. (Here you may include any specific limitations you deem appropriate such as: limiting the grant of authority to make only mental health treatment decisions, your own instructions regarding the administration or withholding of psychotropic medications and electroconvulsive treatment (ECT), instructions regarding your admission to and retention in a health care facility for mental health treatment, or instructions to refuse any specific types of treatment that are unacceptable to you):

.....
.....
.....
.....

C. (Notice: This health care power of attorney may incorporate or be combined with an advance instruction for mental health treatment, executed in accordance with Part 2 of Article 3 of Chapter 122C of the General Statutes, which you may use to state your instructions regarding mental health treatment in the event you lack sufficient understanding or capacity to make or communicate mental health treatment decisions. Because your health care agent's decisions about decisions must be consistent with any statements you have expressed in an advance instruction, you should indicate here whether you have executed an advance instruction for mental health treatment.):

.....
.....

.....

5. Guardianship provision.

If it becomes necessary for a court to appoint a guardian of my person, I nominate my health care agent acting under this document to be the guardian of my person, to serve without bond or security. The guardian shall act consistently with G.S. 35A-1201(a)(5).

6. Reliance of third parties on health care agent.

- A. No person who relies in good faith upon the authority of or any representations by my health care agent shall be liable to me, my estate, my heirs, successors, assigns, or personal representatives, for actions or omissions by my health care agent.
- B. The powers conferred on my health care agent by this document may be exercised by my health care agent alone, and my health care agent's signature or act under the authority granted in this document may be accepted by persons as fully authorized by me and with the same force and effect as if I were personally present, competent, and acting on my own behalf. All acts performed in good faith by my health care agent pursuant to this power of attorney are done with my consent and shall have the same validity and effect as if I were present and exercised the powers myself, and shall inure to the benefit of and bind me, my estate, my heirs, successors, assigns, and personal representatives. The authority of my health care agent pursuant to this power of attorney shall be superior to and binding upon my family, relatives, friends, and others.

7. Miscellaneous provisions.

- A. I revoke any prior health care power of attorney.
- B. My health care agent shall be entitled to sign, execute, deliver, and acknowledge any contract or other document that may be necessary, desirable, convenient, or proper in order to exercise and carry out any of the powers described in this document and to incur reasonable costs on my behalf incident to the exercise of these powers; provided, however, that except as shall be necessary in order to exercise the powers described in this document relating to my health care, my health care agent shall not have any authority over my property or financial affairs.
- C. My health care agent and my health care agent's estate, heirs, successors, and assigns are hereby released and forever discharged by me, my estate, my heirs, successors, and assigns and personal representatives from all liability and from all claims or demands of all kinds arising out of the acts or omissions of my health care agent pursuant to this document, except for willful misconduct or gross negligence.
- D. No act or omission of my health care agent, or of any other person, institution, or facility acting in good faith in reliance on the authority of my health care agent pursuant to this health care power of attorney shall be considered suicide, nor the cause of my death for any civil or criminal purposes, nor shall it be considered

unprofessional conduct or as lack of professional competence. Any person, institution, or facility against whom criminal or civil liability is asserted because of conduct authorized by this health care power of attorney may interpose this document as a defense.

8. Signature of principal.

By signing here, I indicate that I am mentally alert and competent, fully informed as to the contents of this document, and understand the full import of this grant of powers to my health care agent.

.....(SEAL)

Signature of Principal

Date

9. Signatures of Witnesses.

I hereby state that the Principal,....., being of sound mind, signed the foregoing health care power of attorney in my presence, and that I am not related to the principal by blood or marriage, and I would not be entitled to any portion of the estate of the principal under any existing will or codicil of the principal or as an heir under the Intestate Succession Act, if the principal died on this date without a will. I also state that I am not the principal's attending physician, nor an employee of the principal's attending physician, nor an employee of the health facility in which the principal is a patient, nor an employee of a nursing home or any group care home where the principal resides. I further state that I do not have any claim against the principal.

Witness:.....Date:.....

Witness:.....Date:.....

STATE OF NORTH CAROLINA

COUNTY OF.....

CERTIFICATE

I,....., a Notary Public for.....County, North Carolina, hereby certify that.....appeared before me and swore to me and to the witnesses in my presence that this instrument is a health care power of attorney, and that he/she willingly and voluntarily made and executed it as his/her free act and deed for the purposes expressed in it.

I further certify that.....and....., witnesses, appeared before me and swore that they witnessed.....sign the attached health care power of attorney, believing him/her to be of sound mind; and also swore that at the time they witnessed the signing (i) they were not related within the third degree to him/her or his/her spouse, and (ii) they did not know nor have a reasonable expectation that they would be entitled to any portion of his/her estate upon his/her death under any will or codicil thereto then existing or under the Intestate Succession Act as it provided at that time, and (iii) they were not a physician attending him/her, nor an employee of an attending physician, nor an employee of a health facility in which

he/she was a patient, nor an employee of a nursing home or any group-care home in which he/she resided, and (iv) they did not have a claim against him/her. I further certify that I am satisfied as to the genuineness and due execution of the instrument.

This the.....day of....., 19.....

.....
Notary Public

My Commission Expires:
.....

(A copy of this form should be given to your health care agent and any alternate named in this power of attorney, and to your physician and family members.)'"

Section 2. Part 2 of Article 3 of Chapter 122C reads as rewritten:

"Part 2. Advance Instruction for Mental Health Treatment.

"§ 122C-71. *Purpose.*

(a) The General Assembly recognizes as a matter of public policy the fundamental right of an individual to control the decisions relating to the individual's medical care, mental health care, and that this right may be exercised on behalf of the individual by an agent chosen by the individual.

(b) The purpose of this Part is to establish an additional, nonexclusive method for an individual to exercise the right to consent to or refuse mental health treatment when the individual lacks sufficient understanding or capacity to make or communicate mental health treatment decisions.

(c) This Part is intended and shall be construed to be consistent with the provisions of Article 3 of Chapter 32A of the General Statutes, provided that in the event of a conflict between the provisions of this Part and Article 3 of Chapter 32A, the provisions of this Part control.

"§ 122C-72. *Definitions.*

As used in this Part, unless the context clearly requires otherwise, the following terms have the meanings specified:

- (1) "Advance instruction" or "advance instruction for mental health treatment" means a written instrument, signed by two qualified witnesses, that makes a declaration of instructions, that also provides information and preferences regarding mental health treatment, and that may appoint an attorney-in-fact. 'Advance instruction for mental health treatment' or 'advance instruction' means a written instrument, signed in the presence of two qualified witnesses who believe the principal to be of sound mind at the time of the signing, and acknowledged before a notary public, pursuant to which the principal makes a declaration of instructions, information, and preferences regarding the principal's mental health treatment and states that the principal is aware that the advance instruction authorizes a mental health treatment provider to act according to the instruction. It may also state the principal's instructions regarding, but not limited to, consent to or refusal of mental health treatment when the principal is incapable.

- (2) 'Attending physician' means the physician who has primary responsibility for the care and treatment of the principal.
- ~~(3) "Attorney-in-fact" means an adult validly appointed under G.S. 122C-75 to make mental health treatment decisions for a principal under an advance instruction for mental health treatment and also means an alternative attorney-in-fact.~~
- (4) (3) 'Incapable' means that, in the opinion of a physician or eligible psychologist, the person currently lacks sufficient understanding or ~~the~~ capacity to make and communicate mental health treatment decisions. As used in this ~~subdivision~~, Part, the term 'eligible psychologist' has the meaning given ~~the term~~ in G.S. 122C-3(13b) (13d).
- ~~(5)~~ (4) 'Mental health treatment' means the process of providing for the physical, emotional, psychological, and social needs of the principal for the principal's mental illness. 'Mental health treatment' includes, but is not limited to, electroconvulsive treatment (ECT), commonly referred to as 'shock treatment', treatment of mental illness with psychotropic medication, and admission to and retention in a facility for care or treatment of mental illness.
- (6) (5) 'Principal' means the person making the advance instruction.
- (7) (6) 'Qualified witness' means a witness who affirms that the principal is personally known to the witness, that the principal signed or acknowledged the principal's signature on the advance instruction in the presence of the witness, that the witness believes the principal to be of sound mind and not to be under duress, fraud, or undue influence, and that the witness is not:
- a. The attending physician or mental health service provider or ~~a relative~~ an employee of the physician or mental health treatment provider; ~~or~~
 - b. An owner, operator, or ~~relative~~ employee of an owner or operator of a health care facility in which the principal is a patient or ~~resident~~ resident; or
 - c. Related within the third degree to the principal or to the principal's spouse.

"§ 122C-73. *Scope, use, and authority of advance instruction for mental health treatment.*

(a) Any adult of sound mind may make an advance instruction regarding mental health treatment. The advance instruction may include consent to or refusal of mental health treatment. ~~The advance instruction may also appoint an attorney-in-fact.~~

(b) An advance instruction may include, but is not limited to, the names and telephone numbers of individuals to be contacted in case of a mental health crisis, situations that may cause the principal to experience a mental health crisis, responses that may assist the principal to remain in the principal's home during a mental health crisis, the types of assistance that may help stabilize the principal if it becomes necessary to enter a facility, and medications that the principal is taking or has taken in the past and the effects of those medications.

(c) ~~A person~~ An individual shall not be required to execute or to refrain from executing an advance instruction as a condition for insurance coverage, as a condition for receiving mental or physical health services, as a condition for receiving privileges while in a facility, or as a condition of discharge from a facility.

(d) A principal, through an advance instruction, may grant or withhold authority for mental health treatment, including, but not limited to, the use of psychotropic medication, electroconvulsive treatment, and admission to and retention in a facility for the care or treatment of mental illness.

~~(d)~~ (e) A principal may nominate, by advance instruction for mental health treatment, the guardian of the person of the principal if a guardianship proceeding is thereafter commenced. The court shall make its appointment in accordance with the principal's most recent nomination in an unrevoked advance instruction for mental health treatment, except for good cause shown.

(e) (f) If, following the execution of an advance instruction for mental health treatment, a court of competent jurisdiction appoints a guardian of the person of the principal, or a general guardian with powers over the person of the principal, the advance instruction for mental health treatment shall remain in effect and shall be superior to the powers and duties of the guardian of the person with respect to mental health treatment covered under the advance instruction, guardian shall follow the advance instruction consistent with G.S. 35A-1201(a)(5).

(f) (g) An advance instruction for mental health treatment may be combined with or incorporated into a health care power of attorney or general power of attorney that is executed in accordance with the requirements of Chapter 32A of the General Statutes. Statutes so long as each form shall be executed in accordance with its own statute.

"§ 122C-74. Effectiveness and duration; revocation.

(a) A validly executed advance instruction becomes effective when it is delivered to the principal's physician or other mental health treatment provider and remains valid until revoked or expired. The physician or provider shall act in accordance with an advance instruction when the principal has been determined to be incapable. The physician or provider shall continue to obtain the principal's informed consent to all mental health treatment decisions as required by law, upon its proper execution and remains valid unless revoked.

(b) The attending physician or other mental health treatment provider may consider valid and rely upon an advance instruction in the absence of actual knowledge of its revocation or invalidity.

(c) An attending physician or other mental health treatment provider may presume that a person who executed an advance instruction in accordance with this Part was of sound mind and acted voluntarily when he or she executed the advance instruction.

(d) An attending physician or other mental health treatment provider shall act in accordance with an advance instruction when the principal has been determined to be incapable. If a patient is incapable, an advance instruction executed in accordance with this Article is presumed to be valid.

(e) The attending physician or mental health treatment provider shall continue to obtain the principal's informed consent to all mental health treatment decisions when the principal is capable of providing informed consent or refusal, as required by G.S. 122C-57. Unless the principal is deemed incapable by the attending physician or eligible psychologist, the instructions of the principal at the time of treatment shall supersede the declarations expressed in the principal's advance instruction.

(f) The fact of a principal's having executed an advance instruction shall not be considered an indication of a principal's capacity to make or communicate mental health treatment decisions at such times as those decisions are required.

(b) (g) Upon being presented with an advance instruction, a an attending physician or other mental health treatment provider shall make the advance instruction a part of the principal's medical record. When acting under authority of an advance instruction, a an attending physician or other mental health treatment provider shall comply with it to the fullest extent possible, the advance instruction unless compliance is not consistent with: unless:

- (1) Best medical practice to benefit the principal;
- (2) The availability of treatments requested; and
- (3) Applicable law.

~~If the physician or other provider is unwilling at any time to comply with any part or parts of an advance instruction for one or more of the reasons set out in subdivisions (1) through (3) of this subsection, the physician or provider shall promptly notify the principal and, if applicable, the attorney-in-fact, and shall document the reason for not complying with the advance instruction and shall document the notification in the principal's medical record.~~

~~(c) Except as provided in subsection (b) of this section, the physician or provider may subject the principal to mental health treatment in a manner contrary to the principal's instructions as expressed in an advance instruction for mental health treatment only:~~

- ~~(1) If the principal is committed to a 24-hour facility pursuant to Article 5 of G.S. 122C and treatment is authorized in compliance with G.S. 122C-57 and administrative rule; or~~
- ~~(2) In cases of emergency endangering life or health.~~
- (1) Compliance, in the opinion of the attending physician or other mental health treatment provider, is not consistent with generally accepted community practice standards of treatment to benefit the principal;
- (2) Compliance is not consistent with the availability of treatments requested;
- (3) Compliance is not consistent with applicable law;
- (4) The principal is committed to a 24-hour facility pursuant to Article 5 of Chapter 122C of the General Statutes, and treatment is authorized in compliance with G.S. 122C-57 and rules adopted pursuant to it; or
- (5) Compliance, in the opinion of the attending physician or other mental health treatment provider, is not consistent with appropriate treatment in case of an emergency endangering life or health.

In the event that one part of the advance instruction is unable to be followed because of one or more of the above, all other parts of the advance instruction shall nonetheless be followed.

(h) If the attending physician or other mental health treatment provider is unwilling at any time to comply with any part or parts of an advance instruction for one or more of the reasons set out in subdivisions (1) through (5) of subsection (g), the attending physician or other mental health care treatment provider shall promptly notify the principal and, if applicable, the health care agent and shall document the reason for not complying with the advance instruction and shall document the notification in the principal's medical record.

(d) (i) An advance instruction does not limit any authority provided in Article 5 of G.S. 122C either to take a person into custody, or to admit, retain, or treat a person in a facility.

(e) An advance instruction for mental health treatment continues in effect for a period of two years, unless revoked. An advance instruction may be revoked in whole or in part at any time by the principal if the principal is capable. A revocation is effective when a capable principal communicates the revocation to the attending physician or other provider. (j) An advance instruction may be revoked at any time by the principal so long as the principal is not incapable. The principal may exercise this right of revocation in any manner by which the principal is able to communicate an intent to revoke and by notifying the revocation to the treating physician or other mental health treatment provider. The attending physician or other mental health treatment provider shall note the revocation as part of the principal's medical record. The authority of a named attorney-in-fact and any alternative attorney-in-fact named in the advance instruction continues in effect as long as the advance instruction appointing the attorney-in-fact is in effect or until the attorney-in-fact has withdrawn.

(f) A physician or provider who administers or does not administer mental health treatment according to and in good faith reliance upon the validity of an advance instruction is not subject to criminal prosecution, civil liability, or professional disciplinary action resulting from a subsequent finding of an advance instruction's invalidity.

"§ 122C-75. Scope of authority of attorney-in-fact; powers and duties; limitation on liability.

(a) An advance instruction may designate a competent adult to act as attorney-in-fact to make decisions about mental health treatment. An alternative attorney-in-fact may also be designated to act as attorney-in-fact if the original designee is unable or unwilling to act at any time. An attorney-in-fact who has accepted the appointment in writing may make decisions about mental health treatment on behalf of the principal only when the principal is incapable. The decisions shall be consistent with any desires the principal has expressed in the advance instruction.

(b) None of the following may serve as attorney-in-fact:

- (1) The attending physician or mental health service provider or an employee of the physician or provider, if the physician, provider, or employee is unrelated to the principal by blood, marriage, or adoption.

~~(2) An owner, operator, or employee of a health care facility in which the principal is a patient or resident, if the owner, operator, or employee is unrelated to the principal by blood, marriage, or adoption.~~

~~(c) The attorney-in-fact shall not have authority to make mental health treatment decisions unless the principal is incapable.~~

~~(d) The attorney-in-fact is not, as a result of acting in that capacity, personally liable for the cost of treatment provided to the principal.~~

~~(e) Except to the extent the right is limited by the advance instruction or any federal law, an attorney-in-fact has the same right as the principal to receive information regarding the proposed mental health treatment and to receive, review, and consent to disclosure of medical records relating to that treatment. This right of access does not waive any evidentiary privilege.~~

~~(f) In exercising authority under the advance instruction, the attorney-in-fact shall act consistently with the desires of the principal as expressed in the advance instruction. If the principal's desires are not expressed in the advance instruction and are not otherwise known by the attorney-in-fact, the attorney-in-fact shall act in what the attorney-in-fact in good faith believes to be the manner in which the principal would act if the principal was not incapable.~~

~~(g) The appointment of an attorney-in-fact shall not revoke, restrict, or otherwise affect any nonmental health treatment powers granted by the principal to a health care agent pursuant to a health care power of attorney or attorney-in-fact pursuant to a general power of attorney; provided that the mental health treatment powers granted to the attorney-in-fact shall be superior to any similar powers granted by the principal to a health care agent pursuant to a health care power of attorney or an attorney-in-fact pursuant to a general power of attorney.~~

~~(h) An attorney-in-fact is not subject to criminal prosecution, civil liability, or professional disciplinary action for any action taken in good faith pursuant to an advance instruction for mental health treatment.~~

~~(i) An attorney-in-fact may withdraw by giving notice to the principal. If a principal is incapable, the attorney-in-fact may withdraw by giving notice to the attending physician or provider. The attending physician or provider shall note the withdrawal as part of the principal's medical record.~~

~~(j) A person who has withdrawn under the provision of subsection (i) of this section may rescind the withdrawal by executing an acceptance after the date of the withdrawal. The acceptance shall be in the same or similar form as provided for in G.S. 122C-77 for accepting an appointment. A person who rescinds a withdrawal shall give notice to the principal if the principal is capable or to the principal's health care provider if the principal is incapable.~~

~~"§ 122C-75. Reliance on advance instruction for mental health treatment.~~

~~(a) An attending physician or eligible psychologist who in good faith determines that the principal is or is not incapable for the purpose of deciding whether to proceed or not to proceed according to an advance instruction, is not subject to criminal prosecution, civil liability, or professional disciplinary action for making and acting upon that determination.~~

(b) In the absence of actual knowledge of the revocation of an advance instruction, no attending physician or other mental health treatment provider shall be subject to criminal prosecution or civil liability or be deemed to have engaged in unprofessional conduct as a result of the provision of treatment to a principal in accordance with this Part unless the absence of actual knowledge resulted from the negligence of the attending physician or mental health treatment provider.

(c) An attending physician or mental health treatment provider who administers or does not administer mental health treatment according to and in good faith reliance upon the validity of an advance instruction is not subject to criminal prosecution, civil liability, or professional disciplinary action resulting from a subsequent finding of an advance instruction's invalidity.

(d) No attending physician or mental health treatment provider who administers or does not administer treatment under authorization obtained pursuant to this Part shall incur liability arising out of a claim to the extent that the claim is based on lack of informed consent or authorization for this action.

(e) This section shall not be construed as affecting or limiting any liability that arises out of a negligent act or omission in connection with the medical diagnosis, care, or treatment of a principal under an advance instruction or that arises out of any deviation from reasonable medical standards.

"§ 122C-76. Penalty.

It is a Class 2 misdemeanor for a person, without authorization of the principal, willfully to alter, forge, conceal, or destroy an instrument, the reinstatement or revocation of an instrument, or any other evidence or document reflecting the principal's desires and interests, with the intent or effect of affecting a mental health treatment decision.

"§ 122C-77. Statutory form for advance instruction for mental health treatment.

~~The use of the following or similar form in the creation of an advance instruction for mental health treatment is lawful, and when used, it shall be construed in accordance with the provisions of this Article.~~

(a) This Part shall not be construed to invalidate an advance instruction for mental health treatment that was executed prior to January 1, 1999, and was otherwise valid.

(b) The use of the following or similar form after the effective date of this Part in the creation of an advance instruction for mental health treatment is lawful, and, when used, it shall specifically meet the requirements and be construed in accordance with the provisions of this Part.

‘ADVANCE INSTRUCTION FOR MENTAL HEALTH TREATMENT

I, _____, being an adult of sound mind, willfully and voluntarily make this advance instruction for mental health treatment to be followed if it is determined by a physician or eligible psychologist that my ability to receive and evaluate information effectively or communicate decisions is impaired to

such an extent that I lack the capacity to refuse or consent to mental health treatment. "Mental health treatment" means the process of providing for the physical, emotional, psychological, and social needs of the principal. "Mental health treatment" includes electroconvulsive treatment (ECT), commonly referred to as "shock treatment", treatment of mental illness with psychotropic medication, and admission to and retention in a facility for care or treatment of mental illness.

I understand that ~~psychoactive medications and electroconvulsive treatment (ECT) (commonly referred to as "shock treatment")~~ under G.S. 122C-57, other than for specific exceptions stated there, mental health treatment may not be administered without my express and informed written consent or, if I am incapable of giving my informed consent, the express and informed written consent of my legally responsible person, my health care agent named pursuant to a valid health care power of attorney, or attorney-in-fact named pursuant to a valid advance instruction for mental health treatment, as required under G.S. 122C-57, or my consent expressed in this advance instruction for mental health treatment. I understand that I may become incapable of giving or withholding informed consent for mental health treatment due to the symptoms of a diagnosed mental disorder. These symptoms may include:

PSYCHOACTIVE MEDICATIONS

If I become incapable of giving or withholding informed consent for mental health treatment, my instructions regarding psychoactive medications are as follows: (Place initials beside choice.)

 I consent to the administration of the following medications:

 I do not consent to the administration of the following medications:

Conditions or limitations:

ADMISSION TO AND RETENTION IN FACILITY

If I become incapable of giving or withholding informed consent for mental health treatment, my instructions regarding admission to and retention in a health care facility for mental health treatment are as follows: (Place initials beside choice.)

 I consent to being admitted to a health care facility for mental health treatment.

My facility preference is

 I do not consent to being admitted to a health care facility for mental health treatment.

This advance instruction cannot, by law, provide consent to retain me in a facility for more than 10 days.

Conditions or limitations

ADDITIONAL INSTRUCTIONS

These instructions shall apply during the entire length of my incapacity.
In case of mental health crisis, please contact:

1. Name:
Home Address:
Home Telephone Number: _____ Work Telephone
Number:
Relationship to Me:
2. Name:
Home Address:
Home Telephone Number: _____ Work Telephone
Number:
Relationship to Me:
3. My Physician:
Name:
Telephone Number :
4. My Therapist:
Name:
Telephone Number:

The following may cause me to experience a mental health crisis:

The following may help me avoid a hospitalization:

I generally react to being hospitalized as follows:

Staff of the hospital or crisis unit can help me by doing the following:

I give permission for the following person or people to visit me:

Instructions concerning any other medical interventions, such as electroconvulsive (ECT) treatment (commonly referred to as "shock treatment"):

Other instructions:

I have attached an additional sheet of instructions to be followed and considered part of this advance instruction.

ATTORNEY-IN-FACT

I hereby appoint:

Name:

Home Address:

Home Telephone Number: _____ Work Telephone Number: _____

~~to act as my attorney-in-fact to make decisions regarding my mental health treatment if I become incapable of giving or withholding informed consent for that treatment.~~

~~If the person named above refuses or is unable to act on my behalf, or if I revoke that person's authority to act as my attorney-in-fact, I authorize the following person to act as my attorney-in-fact:~~

Name:

Home Address:

Home Telephone Number: _____ Work Telephone Number: _____

~~My attorney-in-fact is authorized to make decisions that are consistent with the instructions I have expressed in this advance instruction or, if not expressed, as are otherwise known by my attorney-in-fact, my attorney-in-fact is to act in what he or she believes to be my best interests.~~

~~If it becomes necessary for the court to appoint a guardian for me, I hereby nominate my attorney-in-fact to serve in that capacity. By signing here, I indicate that I am mentally alert and competent, fully informed as to the contents of this document, and understand the full import of this grant of powers to my attorney-in-fact.~~

~~Signature of Principal~~

Date

SHARING OF INFORMATION BY PROVIDERS

I understand that the information in this document may be shared by my mental health treatment provider with any other mental health treatment provider who may serve me when necessary to provide treatment in accordance with this advance instruction.

Other instructions about sharing of information:

SIGNATURE OF PRINCIPAL

By signing here, I indicate that I am mentally alert and competent, fully informed as to the contents of this document, and understand the full impact of having made this advance instruction for mental health treatment.

Signature of PrincipalDateNATURE OF WITNESSES

I hereby state that the principal is personally known to me, that the principal signed or acknowledged the principal's signature on this advance instruction for mental health treatment in my presence, that the principal appears to be of sound mind and not under duress, fraud, or undue influence, and that I am not:

- a. The attending physician or mental health service provider or an employee of the physician or mental health treatment provider;
- b. An owner, operator, or employee of an owner or operator of a health care facility in which the principal is a patient or resident;
or
- c. Related within the third degree to the principal or to the principal's spouse.

AFFIRMATION OF WITNESSES

We affirm that the principal is personally known to us, that the principal signed or acknowledged the principal's signature on this advance instruction for mental health treatment in our presence, that the principal appears to be of sound mind and not under duress, fraud, or undue influence, and that neither of us is:

A person appointed as an attorney-in-fact by this document;

The principal's attending physician or mental health service provider or a relative of the physician or provider;

The owner, operator, or relative of an owner or operator of a facility in which the principal is a patient or resident; or

A person related to the principal by blood, marriage, or adoption.

Witnessed by:

Witness: _____

Date: _____

Witness: _____

Date: _____

STATE OF NORTH CAROLINA

COUNTY OF _____

ACCEPTANCE OF APPOINTMENT AS ATTORNEY-IN-FACT

~~I accept this appointment and agree to serve as attorney-in-fact to make decisions about mental health treatment for the principal. I understand that I have a duty to act consistent with the desires of the principal as expressed in this appointment. I understand that this document gives me authority to make decisions about mental health treatment only while the principal is incapable as determined by a qualified crisis services professional and a physician or eligible psychologist. I understand that the principal may revoke this advance instruction in whole or in part at any time and in any manner when the principal is not incapable.~~

Signature of Attorney-in-fact

Date

Signature of Alternative Attorney-in-fact

Date"

CERTIFICATION OF NOTARY PUBLIC

STATE OF NORTH CAROLINA
COUNTY OF

I, _____, a Notary Public for the County cited above in the State of North Carolina, hereby certify that appeared before me and swore or affirmed to me and to the witnesses in my presence that this instrument is an advance instruction for mental health treatment, and that he/she willingly and voluntarily made and executed it as his/her free act and deed for the purposes expressed in it.

I further certify that _____ and _____, witnesses, appeared before me and swore or affirmed that they witnessed sign the attached advance instruction for mental health treatment, believing him/her to be of sound mind; and also swore that at the time they witnessed the signing they were not (i) the attending physician or mental health treatment provider or an employee of the physician or mental health treatment provider and (ii) they were not an owner, operator, or employee of an owner or operator of a health care facility in which the principal is a patient or resident, and (iii) they were not related within the third degree to the principal or to the principal's spouse. I further certify that I am satisfied as to the genuineness and due execution of the instrument.

This is the _____ day of _____,

Notary Public

My Commission expires:

NOTICE TO PERSON MAKING AN INSTRUCTION FOR MENTAL HEALTH TREATMENT

This is an important legal document. It creates an instruction for mental health treatment. Before signing this document you should know these important facts:
This document allows you to make decisions in advance about certain types of mental health treatment. The instructions you include in this declaration will be followed if a physician or eligible psychologist determines that you are incapable of making and communicating treatment decisions. Otherwise you will be considered capable to give or withhold consent for the treatments. Your instructions may be overridden if you are being held in accordance with civil commitment law. Under the Health Care Power of

Attorney you may also appoint a person as your health care agent to make treatment decisions for you if you become incapable. You have the right to revoke this document at any time you have not been determined to be incapable. YOU MAY NOT REVOKE THIS ADVANCE INSTRUCTION WHEN YOU ARE FOUND INCAPABLE BY A PHYSICIAN OR OTHER AUTHORIZED MENTAL HEALTH TREATMENT PROVIDER. A revocation is effective when it is communicated to your attending physician or other provider. The physician or other provider shall note the revocation in your medical record. To be valid, this advance instruction must be signed by two qualified witnesses, personally known to you, who are present when you sign or acknowledge your signature. It must also be acknowledged before a notary public.

NOTICE TO PHYSICIAN OR OTHER MENTAL HEALTH TREATMENT PROVIDER

Under North Carolina law, a person may use this advance instruction to provide consent for future mental health treatment if the person later becomes incapable of making those decisions. Under the Health Care Power of Attorney the person may also appoint a health care agent to make mental health treatment decisions for the person when incapable. A person is 'incapable' when in the opinion of a physician or eligible psychologist the person currently lacks sufficient understanding or capacity to make and communicate mental health treatment decisions. This document becomes effective upon its proper execution and remains valid unless revoked. Upon being presented with this advance instruction, the physician or other provider must make it a part of the person's medical record. The attending physician or other mental health treatment provider must act in accordance with the statements expressed in the advance instruction when the person is determined to be incapable, unless compliance is not consistent with G.S. 122C-74(g). The physician or other mental health treatment provider shall promptly notify the principal and, if applicable, the health care agent, and document noncompliance with any part of an advance instruction in the principal's medical record. The physician or other mental health treatment provider may rely upon the authority of a signed, witnessed, dated, and notarized advance instruction, as provided in G.S. 122C-75.'"

Section 3. G.S. 122C-3(20) reads as rewritten:

"(20) 'Legally responsible person' means: (i) when applied to an adult, who has been adjudicated incompetent, a ~~guardian; or guardian;~~ (ii) when applied to a minor, a parent, guardian, a person standing in loco parentis, or a legal custodian other than a parent who has been granted specific authority by law or in a custody order to consent for medical care, including psychiatric ~~treatment.~~ treatment; or (iii) when applied to an adult who is incapable as defined in G.S. 122C-72(c) and who has not been adjudicated incompetent, a health care agent named pursuant to a valid health care power of attorney as prescribed in Article 3 of Chapter 32 of the General Statutes."

Section 4. G.S. 122C-55 is amended by adding a new subsection to read:

"(e2) A responsible professional may disclose an advance instruction for mental health treatment or confidential information from an advance instruction to a physician, psychologist, or other qualified professional when the responsible professional determines that disclosure is necessary to give effect to or provide treatment in accordance with the advance instruction."

Section 5. G.S. 122C-57(d), (e), and (f) are amended as follows:

"(d) Each voluntarily admitted client, the client's legally responsible person, or a health care agent named pursuant to a valid health care power of attorney, or an attorney in fact named pursuant to a valid advance instruction for mental health treatment has the right to consent to or refuse any treatment offered by the facility. Consent may be withdrawn at any time by the person who gave the consent. If treatment is refused, the qualified professional shall determine whether treatment in some other modality is possible. If all appropriate treatment modalities are refused, the voluntarily admitted client may be discharged. In an emergency, a voluntarily admitted client may be administered treatment or medication, other than those specified in subsection (f) of this section, despite the refusal of the client, the client's legally responsible person, person, a health care agent named pursuant to a valid health care power of attorney, or the client's refusal expressed in a valid advance instruction for mental health treatment, or an attorney in fact named pursuant to a valid advance instruction for mental health treatment.

(d1) Except as provided in G.S. 90-21.4, discharge of a voluntarily admitted minor from treatment shall include notice to and consultation with the minor's legally responsible person and in no event shall a minor be discharged from treatment upon the minor's request alone.

(e) In the case of an involuntarily committed client, treatment measures other than those requiring express written consent as specified in subsection (f) of this section may be given despite the refusal of the client, the client's legally responsible person, a health care agent named pursuant to a valid health care power of attorney, or the client's refusal expressed in a valid advanced instruction for mental health treatment in the event of an emergency or when consideration of side effects related to the specific treatment measure is given and in the professional judgment, as documented in the client's record, of the treating physician and a second physician, who is either the director of clinical services of the facility, or that person's designee, either:

- (1) The client, without the benefit of the specific treatment measure, is incapable of participating in any available treatment plan which will give the client a realistic opportunity of improving his condition;
- (2) There is, without the benefit of the specific treatment measure, a significant possibility that the client will harm himself or others before improvement of the client's condition is realized.

(f) Treatment involving electroshock therapy, the use of experimental drugs or procedures, or surgery other than emergency surgery may not be given without the express and informed written consent of the client or the

client's legally responsible person, a health care agent named pursuant to a valid health care power of attorney, or the client's consent expressed in a valid advanced instruction or mental health treatment, or an attorney in fact named pursuant to a valid advance instruction for mental health treatment."

Section 6. G.S. 122C-211(a) is amended and new (f) is added as follows:

"(a) Except as provided in subsections (b) through ~~(e)~~ (f) of this section, any individual in need of treatment for mental illness or substance abuse may seek voluntary admission at any facility by presenting himself for evaluation to the facility.

(f) An individual in need of treatment for mental illness may be admitted to a facility pursuant to an advance instruction for mental health treatment or pursuant to the authority of a health care agent named in a valid health care power of attorney, provided that the individual is incapable, as defined in G.S. 122C-72(c), at the time of the need for admission. An individual admitted to a facility pursuant to an advance instruction may not be retained for more than 10 days, except as provided for in subsection (b) of this section. When a health care power of attorney authorizes a health care agent to seek the admission of an incapable individual, the health care agent shall act for the individual in applying for admission to a facility and in consenting to medical treatment at the facility when consent is required, provided that the individual is incapable."

Section 7. This act becomes effective October 1, 1998.

In the General Assembly read three times and ratified this the 14th day of October, 1998.

Became law upon approval of the Governor at 2:15 p.m. on the 24th day of October, 1998.

S.B. 801

SESSION LAW 1998-199

AN ACT TO ESTABLISH THE NORTH CAROLINA PLANNED COMMUNITY ACT.

The General Assembly of North Carolina enacts:

Section 1. The General Statutes are amended by adding a new Chapter to read:

"Chapter 47E.

"North Carolina Planned Community Act.

"ARTICLE 1.

"General Provisions.

"§ 47E-1-101. Short title.

This Chapter shall be known and may be cited as the North Carolina Planned Community Act.

"§ 47E-1-102. Applicability.

(a) This Chapter applies to all planned communities within this State except as provided in subsection (b) of this section.

(b) This Chapter does not apply to a planned community created within this State:

- (1) Which contains no more than 20 lots (including all lots which may be added or created by the exercise of development rights) unless the declaration provides or is amended to provide that this Chapter does apply to that planned community; or
- (2) In which all lots are restricted exclusively to nonresidential purposes, unless the declaration provides or is amended to provide that this Chapter does apply to that planned community.
- (c) This Chapter does not apply to planned communities or lots located outside this State.

(d) Any planned community created prior to the effective date of this Chapter may elect to make the provisions of this Chapter applicable to it by amending its declaration to provide that this Chapter shall apply to that planned community. The amendment may be made by affirmative vote or written agreement signed by lot owners of lots to which at least sixty-seven percent (67%) percent of the votes in the association are allocated or any smaller majority the declaration specifies. To the extent the procedures and requirements for amendment in the declaration conflict with the provisions of this subsection, this subsection shall control with respect to any amendment to provide that this Chapter applies to that planned community.

"§ 47E-1-103. Definitions.

In the declaration and bylaws, unless specifically provided otherwise or the context otherwise requires, and in this Chapter:

- (1) Reserved.
- (2) 'Allocated interests' means the common expense liability and votes in the association allocated to each lot.
- (3) 'Association' or 'owners' association' means the association organized as allowed under North Carolina law, including G.S. 47E-3-101.
- (4) 'Common elements' means any real estate within a planned community owned or leased by the association, other than a lot.
- (5) 'Common expenses' means expenditures made by or financial liabilities of the association, together with any allocations to reserves.
- (6) 'Common expense liability' means the liability for common expenses allocated to each lot as permitted by this Chapter, the declaration or otherwise by law.
- (7) 'Condominium' means real estate, as defined and created under Chapter 47C.
- (8) 'Cooperative' means real estate owned by a corporation, trust, trustee, partnership, or unincorporated association, where the governing instruments of that organization provide that each of the organization's members, partners, stockholders, or beneficiaries is entitled to exclusive occupancy of a designated portion of that real estate.
- (9) 'Declarant' means any person or group of persons acting in concert who (i) as part of a common promotional plan, offers to dispose of the person's or group's interest in a lot not previously disposed of, or (ii) reserves or succeeds to any special declarant right.

- (10) 'Declaration' means any instruments, however denominated, that create a planned community and any amendments to those instruments.
- (11) Reserved.
- (12) Reserved.
- (13) 'Executive board' means the body, regardless of name, designated in the declaration to act on behalf of the association.
- (14) Reserved.
- (15) Reserved.
- (16) 'Leasehold planned community' means a planned community in which all or a portion of the real estate is subject to a lease, the expiration or termination of which will terminate the planned community or reduce its size.
- (17) 'Lessee' means the party entitled to present possession of a leased lot whether lessee, sublessee, or assignee.
- (18) 'Limited common element' means a portion of the common elements allocated by the declaration or by operation of law for the exclusive use of one or more but fewer than all of the lots.
- (19) 'Lot' means a physical portion of the planned community designated for separate ownership or occupancy by a lot owner.
- (20) 'Lot owner' means a declarant or other person who owns a lot, or a lessee of a lot in a leasehold planned community whose lease expires simultaneously with any lease the expiration or termination of which will remove the lot from the planned community, but does not include a person having an interest in a lot solely as security for an obligation.
- (21) 'Master association' means an organization described in G.S. 47E-2-120, whether or not it is also an association described in G.S. 47E-3-101.
- (22) 'Person' means a natural person, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or other legal or commercial entity.
- (23) 'Planned community' means real estate with respect to which any person, by virtue of that person's ownership of a lot, is expressly obligated by a declaration to pay real property taxes, insurance premiums, or other expenses to maintain, improve, or benefit other lots or other real estate described in the declaration. For purposes of this act, neither a cooperative nor a condominium is a planned community, but real estate comprising a condominium or cooperative may be part of a planned community. 'Ownership of a lot' does not include holding a leasehold interest of less than 20 years in a lot, including renewal options.
- (24) 'Purchaser' means any person, other than a declarant or a person in the business of selling real estate for the purchaser's own account, who by means of a voluntary transfer acquires a legal or equitable interest in a lot, other than (i) a leasehold interest (including renewal options) of less than 20 years, or (ii) as security for an obligation.

- (25) 'Reasonable attorneys' fees' means attorneys' fees reasonably incurred without regard to any limitations on attorneys' fees which otherwise may be allowed by law.
- (26) 'Real estate' means any leasehold or other estate or interest in, over, or under land, including structures, fixtures, and other improvements and interests which by custom, usage, or law pass with a conveyance of land though not described in the contract of sale or instrument of conveyance. 'Real estate' includes parcels with or without upper or lower boundaries, and spaces that may be filled with air or water.
- (27) Reserved.
- (28) 'Special declarant rights' means rights reserved for the benefit of a declarant including, without limitation, any right (i) to complete improvements indicated on plats and plans filed with the declaration; (ii) to exercise any development right; (iii) to maintain sales offices, management offices, signs advertising the planned community, and models; (iv) to use easements through the common elements for the purpose of making improvements within the planned community or within real estate which may be added to the planned community; (v) to make the planned community part of a larger planned community or group of planned communities; (vi) to make the planned community subject to a master association; or (vii) to appoint or remove any officer or executive board member of the association or any master association during any period of declarant control.
- (29) Reserved.

"§ 47E-1-104. Variation.

(a) Except as specifically provided in specific sections of this Chapter, the provisions of this Chapter may not be varied by the declaration or bylaws.

(b) The provisions of this Chapter may not be varied by agreement; however, after breach of a provision of this Chapter, rights created hereunder may be knowingly waived in writing.

(c) Notwithstanding any of the provisions of this Chapter, a declarant may not act under a power of attorney or proxy or use any other device to evade the limitations or prohibitions of this Chapter, the declaration, or the bylaws.

"§ 47E-1-105: Reserved.

"§ 47E-1-106. Applicability of local ordinances, regulations, and building codes.

A zoning, subdivision, or building code or other real estate use law, ordinance, or regulation may not prohibit a planned community or impose any requirement upon a planned community which it would not impose upon a substantially similar development under a different form of ownership or administration. Otherwise, no provision of this Chapter invalidates or modifies any provision of any zoning, subdivision, or building code or any other real estate use law, ordinance, or regulation. No local ordinance or regulation may require the recordation of a declaration prior to the date required by this Chapter.

"§ 47E-1-107. Eminent domain.

(a) If a lot is acquired by eminent domain, or if part of a lot is acquired by eminent domain leaving the lot owner with a remnant which may not practically or lawfully be used for any purpose permitted by the declaration, the award shall compensate the lot owner for his lot and its interest in the common element. Upon acquisition, unless the decree otherwise provides, the lot's allocated interests are automatically reallocated to the remaining lots in proportion to the respective allocated interests of those lots before the taking, exclusive of the lot taken.

(b) Except as provided in subsection (a) of this section, if part of a lot is acquired by eminent domain, the award shall compensate the lot owner for the reduction in value of the lot. Upon acquisition, unless the decree otherwise provides, (i) that lot's allocated interests are reduced in proportion to the reduction in the size of the lot, or on any other basis specified in the declaration, and (ii) the portion of the allocated interests divested from the partially acquired lot are automatically reallocated to that lot and the remaining lots in proportion to the respective allocated interests of those lots before the taking, with the partially acquired lot participating in the reallocation on the basis of its reduced allocated interests.

(c) If there is any reallocation under subsection (a) or (b) of this section, the association shall promptly prepare, execute, and record an amendment to the declaration reflecting the reallocations. Any remnant of a lot remaining after part of a lot is taken under this subsection is thereafter a common element.

(d) If part of the common elements is acquired by eminent domain, the portion of the award attributable to the common elements taken shall be paid to the association. Unless the declaration provides otherwise, any portion of the award attributable to the acquisition of a limited common element shall be apportioned among the owners of the lots to which that limited common element was allocated at the time of acquisition based on their allocated interest in the common elements before the taking.

(e) The court decree shall be recorded in every county in which any portion of the planned community is located.

"§ 47E-1-108. Supplemental general principles of law applicable.

The principles of law and equity as well as other North Carolina statutes (including the provisions of the North Carolina Nonprofit Corporation Act) supplement the provisions of this Chapter, except to the extent inconsistent with this Chapter. When these principles or statutes are inconsistent or conflict with this Chapter, the provisions of this Chapter will control.

"§ 47E-1-109 through 47E-1-115: Reserved.

"ARTICLE 2.

"Creation, Alteration, and Termination of Planned Communities.

"§ 47E-2-101. Creation of the planned community.

A declaration creating a planned community shall be executed in the same manner as a deed, shall be recorded in every county in which any portion of the planned community is located, and shall be indexed in the Grantee index in the name of the planned community and the association and in the Grantor index in the name of each person executing the declaration.

"§ 47E-2-102: Reserved.

"§ 47E-2-103. Construction and validity of declaration and bylaws.

(a) All provisions of the declaration and bylaws are severable.

(b) The rule against perpetuities may not be applied to defeat any provision of the declaration, bylaws, rules, or regulations adopted pursuant to G.S. 47E-3-102(a)(1).

(c) In the event of a conflict between the provisions of the declaration and the bylaws, the declaration prevails except to the extent the declaration is inconsistent with this Chapter.

(d) Title to a lot and common elements is not rendered unmarketable or otherwise affected by reason of an insubstantial failure of the declaration to comply with this Chapter. Whether a substantial failure to comply with this Chapter impairs marketability shall be determined by the law of this State relating to marketability.

"§ 47E-2-104 through 47E-2-116: Reserved.

"§ 47E-2-117. Amendment of declaration.

(a) Except in cases of amendments that may be executed by a declarant under the terms of the declaration or by certain lot owners under G.S. 47E-2-118(b), the declaration may be amended only by affirmative vote or written agreement signed by lot owners of lots to which at least sixty-seven percent (67%) of the votes in the association are allocated, or any larger majority the declaration specifies or by the declarant if necessary for the exercise of any development right. The declaration may specify a smaller number only if all of the lots are restricted exclusively to nonresidential use.

(b) No action to challenge the validity of an amendment adopted pursuant to this section may be brought more than one year after the amendment is recorded.

(c) Every amendment to the declaration shall be recorded in every county in which any portion of the planned community is located and is effective only upon recordation. An amendment shall be indexed in the Grantee index in the name of the planned community and the association and in the Grantor index in the name of each person executing the amendment.

(d) Reserved.

(e) Amendments to the declaration required by this Chapter to be recorded by the association shall be prepared, executed, recorded, and certified in accordance with G.S. 47-41.

"§ 47E-2-118. Termination of planned community.

(a) Except in the case of taking of all the lots by eminent domain (G.S. 47E-1-107), a planned community may be terminated only by agreement of lot owners of lots to which at least eighty percent (80%) of the votes in the association are allocated, or any larger percentage the declaration specifies. The declaration may specify a smaller percentage only if all of the lots in the planned community are restricted exclusively to nonresidential uses.

(b) An agreement to terminate shall be evidenced by the execution of a termination agreement, or ratifications thereof, in the same manner as a deed, by the requisite number of lot owners. The termination agreement shall specify a date after which the agreement will be void unless it is recorded before that date. A termination agreement and all ratifications thereof shall be recorded in every county in which a portion of the planned community is situated and is effective only upon recordation.

(c) A termination agreement may provide for sale of the common elements, but may not require that the lots be sold following termination, unless the declaration as originally recorded provided otherwise or unless all the lot owners consent to the sale. If, pursuant to the agreement, any real estate in the planned community is to be sold following termination, the termination agreement shall set forth the minimum terms of the sale.

(d) The association, on behalf of the lot owners, may contract for the sale of real estate in the planned community, but the contract is not binding until approved pursuant to subsections (a) and (b) of this section. Until the sale has been concluded and the proceeds thereof distributed, the association continues in existence with all powers it had before termination. Proceeds of the sale shall be distributed to lot owners and lienholders as their interests may appear, as provided in the termination agreement.

(e) If the real estate constituting the planned community is not to be sold following termination, title to the common elements vests in the lot owners upon termination as tenants in common in proportion to their respective interests as provided in the termination agreement.

(f) Following termination of the planned community, the proceeds of any sale of real estate, together with the assets of the association, are held by the association as trustee for lot owners and holders of liens on the lots as their interests may appear. All other creditors of the association are to be treated as if they had perfected liens on the common elements immediately before termination.

(g) If the termination agreement does not provide for the distribution of sales proceeds pursuant to subsection (d) of this section or the vesting of title pursuant to subsection (e) of this section, sales proceeds shall be distributed and title shall vest in accordance with each lot owner's allocated share of common expense liability.

(h) Except as provided in subsection (i) of this section, foreclosure or enforcement of a lien or encumbrance against the common elements does not of itself terminate the planned community, and foreclosure or enforcement of a lien or encumbrance against a portion of the common elements other than withdrawable real estate does not withdraw that portion from the planned community. Foreclosure or enforcement of a lien or encumbrance against withdrawable real estate does not of itself withdraw that real estate from the planned community, but the person taking title thereto has the right to require from the association, upon request, an amendment excluding the real estate from the planned community.

(i) If a lien or encumbrance against a portion of the real estate comprising the planned community has priority over the declaration and the lien or encumbrance has not been partially released, the parties foreclosing the lien or encumbrance may, upon foreclosure, record an instrument excluding the real estate subject to that lien or encumbrance from the planned community.

"§ 47E-2-119: Reserved.

"§ 47E-2-120. Master associations.

If the declaration for a planned community provides that any of the powers described in G.S. 47E-3-102 are to be exercised by or may be delegated to a profit or nonprofit corporation which exercises those or other

powers on behalf of one or more other planned communities or for the benefit of the lot owners of one or more other planned communities, all provisions of this act applicable to lot owners' associations apply to any such corporation.

"§ 47E-2-121. Merger or consolidation of planned communities.

(a) Any two or more planned communities, by agreement of the lot owners as provided in subsection (b) of this section, may be merged or consolidated into a single planned community. In the event of a merger or consolidation, unless the agreement otherwise provides, the resultant planned community is, for all purposes, the legal successor of all of the preexisting planned communities, and the operations and activities of all associations of the preexisting planned communities shall be merged or consolidated into a single association which shall hold all powers, rights, obligations, assets, and liabilities of all preexisting associations.

(b) An agreement of two or more planned communities to merge or consolidate pursuant to subsection (a) of this section shall be evidenced by an agreement prepared, executed, recorded, and certified by the president of the association of each of the preexisting planned communities following approval by owners of lots to which are allocated the percentage of votes in each planned community required to terminate that planned community. Any such agreement shall be recorded in every county in which a portion of the planned community is located and is not effective until recorded.

(c) Every merger or consolidation agreement shall provide for the reallocation of the allocated interests in the new association among the lots of the resultant planned community either (i) by stating the reallocations or the formulas upon which they are based or (ii) by stating the percentage of overall common expense liabilities and votes in the new association which are allocated to all of the lots comprising each of the preexisting planned communities, and providing that the portion of the percentages allocated to each lot formerly comprising a part of the preexisting planned community shall be equal to the percentages of common expense liabilities and votes in the association allocated to that lot by the declaration of the preexisting planned community.

"§ 47E-2-122: Reserved.

"ARTICLE 3.

"Management of Planned Community.

"§ 47E-3-101. Organization of owners' association.

A lot owners' association shall be incorporated no later than the date the first lot in the planned community is conveyed. The membership of the association at all times shall consist exclusively of all the lot owners or, following termination of the planned community, of all persons entitled to distributions of proceeds under G.S. 47E-2-118. Every association created after the effective date of this Chapter shall be organized as a nonprofit corporation.

"§ 47E-3-102. Powers of owners' association.

Subject to the provisions of the articles of incorporation or the declaration and the declarant's rights therein, the association may:

- (1) Adopt and amend bylaws and rules and regulations;

- (2) Adopt and amend budgets for revenues, expenditures, and reserves and collect assessments for common expenses from lot owners;
- (3) Hire and discharge managing agents and other employees, agents, and independent contractors;
- (4) Institute, defend, or intervene in litigation or administrative proceedings on matters affecting the planned community;
- (5) Make contracts and incur liabilities;
- (6) Regulate the use, maintenance, repair, replacement, and modification of common elements;
- (7) Cause additional improvements to be made as a part of the common elements;
- (8) Acquire, hold, encumber, and convey in its own name any right, title, or interest to real or personal property, provided that common elements may be conveyed or subjected to a security interest only pursuant to G.S. 47E-3-112;
- (9) Grant easements, leases, licenses, and concessions through or over the common elements;
- (10) Impose and receive any payments, fees, or charges for the use, rental, or operation of the common elements other than the limited common elements and for services provided to lot owners;
- (11) Impose reasonable charges for late payment of assessments and, after notice and an opportunity to be heard, suspend privileges or services provided by the association (except rights of access to lots) during any period that assessments or other amounts due and owing to the association remain unpaid for a period of 30 days or longer;
- (12) After notice and an opportunity to be heard, impose reasonable fines or suspend privileges or services provided by the association (except rights of access to lots) for reasonable periods for violations of the declaration, bylaws, and rules and regulations of the association;
- (13) Impose reasonable charges in connection with the preparation and recordation of documents, including, without limitation, amendments to the declaration or statements of unpaid assessments;
- (14) Provide for the indemnification of and maintain liability insurance for its officers, executive board, directors, employees, and agents;
- (15) Assign its right to future income, including the right to receive common expense assessments;
- (16) Exercise all other powers that may be exercised in this State by legal entities of the same type as the association; and
- (17) Exercise any other powers necessary and proper for the governance and operation of the association.

"§ 47E-3-103. Executive board members and officers.

(a) Except as provided in the declaration, in the bylaws, in subsection (b) of this section, or in other provisions of this Chapter, the executive board may act in all instances on behalf of the association. In the performance of their duties, officers and members of the executive board shall discharge

their duties in good faith. Officers shall act according to the standards for officers of a nonprofit corporation set forth in G.S. 55A-8-42, and members shall act according to the standards for directors of a nonprofit corporation set forth in G.S. 55A-8-30.

(b) The executive board may not act unilaterally on behalf of the association to amend the declaration (G.S. 47E-2-117), to terminate the planned community (G.S. 47E-2-118), or to elect members of the executive board or determine the qualifications, powers and duties, or terms of office of executive board members (G.S. 47E-3-103(f)), but the executive board may unilaterally fill vacancies in its membership for the unexpired portion of any term. Notwithstanding any provision of the declaration or bylaws to the contrary, the lot owners, by a majority vote of all persons present and entitled to vote at any meeting of the lot owners at which a quorum is present, may remove any member of the executive board with or without cause, other than a member appointed by the declarant.

(c) Within 30 days after adoption of any proposed budget for the planned community, the executive board shall provide to all the lot owners a summary of the budget and a notice of the meeting to consider ratification of the budget, including a statement that the budget may be ratified without a quorum. The executive board shall set a date for a meeting of the lot owners to consider ratification of the budget, such meeting to be held not less than 10 nor more than 60 days after mailing of the summary and notice. There shall be no requirement that a quorum be present at the meeting. The budget is ratified unless at that meeting a majority of all the lot owners in the association or any larger vote specified in the declaration rejects the budget. In the event the proposed budget is rejected, the periodic budget last ratified by the lot owners shall be continued until such time as the lot owners ratify a subsequent budget proposed by the executive board.

(d) The declaration may provide for a period of declarant control of the association, during which period a declarant, or persons designated by the declarant, may appoint and remove the officers and members of the executive board.

(e) Not later than the termination of any period of declarant control, the lot owners shall elect an executive board of at least three members, at least a majority of whom shall be lot owners. The executive board shall elect the officers. The executive board members and officers shall take office upon election.

"§ 47E-3-104. Transfer of special declarant rights.

Except for transfer of declarant rights pursuant to foreclosure, no special declarant right (G.S. 47E-1-103(28)) may be transferred except by an instrument evidencing the transfer recorded in every county in which any portion of the planned community is located. The instrument is not effective unless executed by the transferee.

"§ 47E-3-105. Termination of contracts and leases of declarant.

If entered into before the executive board elected by the lot owners pursuant to G.S. 47E-3-103(e) takes office, any contract or lease affecting or related to the planned community that is not bona fide or was unconscionable to the lot owners at the time entered into under the circumstances then prevailing, may be terminated without penalty by the

association at any time after the executive board elected by the lot owners pursuant to G.S. 47E-3-103(e) takes office upon not less than 90 days' notice to the other party.

"§ 47E-3-106. Bylaws.

(a) The bylaws of the association shall provide for:

- (1) The number of members of the executive board and the titles of the officers of the association;
- (2) Election by the executive board of officers of the association;
- (3) The qualifications, powers and duties, terms of office, and manner of electing and removing executive board members and officers and filling vacancies;
- (4) Which, if any, of its powers the executive board or officers may delegate to other persons or to a managing agent;
- (5) Which of its officers may prepare, execute, certify, and record amendments to the declaration on behalf of the association; and
- (6) The method of amending the bylaws.

(b) The bylaws may provide for any other matters the association deems necessary and appropriate.

"§ 47E-3-107. Upkeep of planned community; responsibility and assessments for damages.

(a) Except as otherwise provided in the declaration, G.S. 47E-3-113(h) or subsection (b) of this section, the association is responsible for causing the common elements to be maintained, repaired, and replaced when necessary and to assess the lot owners as necessary to recover the costs of such maintenance, repair, or replacement except that the costs of maintenance, repair, or replacement of a limited common element shall be assessed as provided in G.S. 47E-3-115(c)(1). Except as otherwise provided in the declaration, each lot owner is responsible for the maintenance and repair of his lot and any improvements thereon. Each lot owner shall afford to the association and when necessary to another lot owner access through the lot owner's lot reasonably necessary for any such maintenance, repair, or replacement activity.

(b) If a lot owner is legally responsible for damage inflicted on any common element, the association may direct such lot owner to repair such damage, or the association may itself cause the repairs to be made and recover damages from the responsible lot owner.

(c) If damage is inflicted on any lot by an agent of the association in the scope of the agent's activities as such agent, the association is liable to repair such damage or to reimburse the lot owner for the cost of repairing such damages. The association shall also be liable for any losses to the lot owner.

(d) When the claim under subsection (b) or (c) of this section is less than or equal to the jurisdictional amount established for small claims by G.S. 7A-210, any aggrieved party may request that a hearing be held before an adjudicatory panel appointed by the executive board to determine if a lot owner is responsible for damages to any common element or the association is responsible for damages to any lot. If the executive board fails to appoint an adjudicatory panel to hear such matters, hearings under this section shall be held before the executive board. Such panel shall accord to the party

charged with causing damages notice of the charge, opportunity to be heard and to present evidence, and notice of the decision. This panel may assess liability for each damage incident against each lot owner charged or against the association not in excess of the jurisdictional amount established for small claims by G.S. 7A-210. When the claim under subsection (b) or (c) of this section exceeds the jurisdictional amount established for small claims by G.S. 7A-210, liability of any lot owner charged or the association shall be determined as otherwise provided by law. Liabilities of lot owners determined by adjudicatory hearing or as otherwise provided by law shall be assessments secured by lien under G.S. 47E-3-116. Liabilities of the association determined by adjudicatory hearing or as otherwise provided by law may be offset by the lot owner against sums owing to the association and if so offset, shall reduce the amount of any lien of the association against the lot at issue.

(e) The association shall not be liable for maintenance, repair, and all other expenses in connection with any real estate which has not been incorporated into the planned community.

"§ 47E-3-107A. Procedures for fines and suspension of planned community privileges or services.

Unless a specific procedure for the imposition of fines or suspension of planned community privileges or services is provided for in the declaration, a hearing shall be held before an adjudicatory panel appointed by the executive board to determine if any lot owner should be fined or if planned community privileges or services should be suspended pursuant to the powers granted to the association in G.S. 47E-3-102(11) and (12). If the executive board fails to appoint an adjudicatory panel to hear such matters, hearings under this section shall be held before the executive board. The lot owner charged shall be given notice of the charge, opportunity to be heard and to present evidence, and notice of the decision. If it is decided that a fine should be imposed, a fine not to exceed one hundred fifty dollars (\$150.00) may be imposed for the violation and without further hearing, for each day after the decision that the violation occurs. Such fines shall be assessments secured by liens under G.S. 47E-3-116. If it is decided that a suspension of planned community privileges or services should be imposed, the suspension may be continued without further hearing until the violation or delinquency is cured.

"§ 47E-3-108. Meetings.

A meeting of the association shall be held at least once each year. Special meetings of the association may be called by the president, a majority of the executive board, or by lot owners having ten percent (10%), or any lower percentage specified in the bylaws, of the votes in the association. Not less than 10 nor more than 60 days in advance of any meeting, the secretary or other officer specified in the bylaws shall cause notice to be hand-delivered or sent prepaid by United States mail to the mailing address of each lot or to any other mailing address designated in writing by the lot owner. The notice of any meeting shall state the time and place of the meeting and the items on the agenda, including the general nature of any proposed amendment to the declaration or bylaws, any budget changes, and any proposal to remove a director or officer.

"§ 47E-3-109. Quorums.

(a) Unless the bylaws provide otherwise, a quorum is present throughout any meeting of the association if persons entitled to cast ten percent (10%) of the votes which may be cast for election of the executive board are present in person or by proxy at the beginning of the meeting.

(b) Unless the bylaws specify a larger percentage, a quorum is deemed present throughout any meeting of the executive board if persons entitled to cast fifty percent (50%) of the votes on that board are present at the beginning of the meeting.

(c) In the event business cannot be conducted at any meeting because a quorum is not present, that meeting may be adjourned to a later date by the affirmative vote of a majority of those present in person or by proxy. Notwithstanding any provision to the contrary in the declaration or the bylaws, the quorum requirement at the next meeting shall be one-half of the quorum requirement applicable to the meeting adjourned for lack of a quorum. This provision shall continue to reduce the quorum by fifty percent (50%) from that required at the previous meeting, as previously reduced, until such time as a quorum is present and business can be conducted.

"§ 47E-3-110. Voting; proxies.

(a) If only one of the multiple owners of a lot is present at a meeting of the association, the owner who is present is entitled to cast all the votes allocated to that lot. If more than one of the multiple owners are present, the votes allocated to that lot may be cast only in accordance with the agreement of a majority in interest of the multiple owners, unless the declaration or bylaws expressly provide otherwise. Majority agreement is conclusively presumed if any one of the multiple owners casts the votes allocated to that lot without protest being made promptly to the person presiding over the meeting by any of the other owners of the lot.

(b) Votes allocated to a lot may be cast pursuant to a proxy duly executed by a lot owner. If a lot is owned by more than one person, each owner of the lot may vote or register protest to the casting of votes by the other owners of the lot through a duly executed proxy. A lot owner may not revoke a proxy given pursuant to this section except by actual notice of revocation to the person presiding over a meeting of the association. A proxy is void if it is not dated. A proxy terminates 11 months after its date, unless it specifies a shorter term.

(c) If the declaration requires that votes on specified matters affecting the planned community be cast by lessees rather than lot owners of leased lots, (i) the provisions of subsections (a) and (b) of this section apply to lessees as if they were lot owners; (ii) lot owners who have leased their lots to other persons may not cast votes on those specified matters; and (iii) lessees are entitled to notice of meetings, access to records, and other rights respecting those matters as if they were lot owners. Lot owners shall also be given notice, in the manner provided in G.S. 47E-3-108, of all meetings at which lessees may be entitled to vote.

(d) No votes allocated to a lot owned by the association may be cast.

(e) The declaration may provide that on specified issues only a defined subgroup of lot owners may vote provided:

- (1) The issue being voted is of special interest solely to the members of the subgroup; and
- (2) All except de minimis cost that will be incurred based on the vote taken will be assessed solely against those lot owners entitled to vote.

(f) For purposes of subdivision(e)(1) above, an issue to be voted on is not a special interest solely to a subgroup if it substantially affects the overall appearance of the planned community or substantially affects living conditions of lot owners not included in the voting subgroup.

" 47E-3-111. Tort and contract liability.

(a) Neither the association nor any lot owner except the declarant is liable for that declarant's torts in connection with any part of the planned community which that declarant has the responsibility to maintain.

(b) An action alleging a wrong done by the association shall be brought against the association and not against a lot owner.

(c) Any statute of limitation affecting the association's right of action under this section is tolled until the period of declarant control terminates. A lot owner is not precluded from bringing an action contemplated by this section because the person is a lot owner or a member of the association.

" § 47E-3-112. Conveyance or encumbrance of common elements.

(a) Portions of the common elements may be conveyed or subjected to a security interest by the association if persons entitled to cast at least eighty percent (80%) of the votes in the association, or any larger percentage the declaration specifies, agree in writing to that action; provided that all the owners of lots to which any limited common element is allocated shall agree in order to convey that limited common element or subject it to a security interest. The declaration may specify a smaller percentage only if all the lots are restricted exclusively to nonresidential uses. Distribution of proceeds of the sale of a limited common element shall be as provided by agreement between the lot owners to which it is allocated and the association. Proceeds of the sale or financing of a common element (other than a limited common element) shall be an asset of the association.

(b) The association, on behalf of the lot owners, may contract to convey common elements or subject them to a security interest, but the contract is not enforceable against the association until approved pursuant to subsection (a) of this section. Thereafter, the association has all powers necessary and appropriate to effect the conveyance or encumbrance, free and clear of any interest of any lot owner or the association in or to the common element conveyed or encumbered, including the power to execute deeds or other instruments.

(c) Any purported conveyance, encumbrance, or other voluntary transfer of common elements, unless made pursuant to this section is void.

(d) No conveyance or encumbrance of common elements pursuant to this section may deprive any lot of its rights of access and support.

" § 47E-3-113. Insurance.

(a) Commencing not later than the time of the first conveyance of a lot to a person other than a declarant, the association shall maintain, to the extent reasonably available:

- (1) Property insurance on the common elements insuring against all risks of direct physical loss commonly insured against including fire and extended coverage perils. The total amount of insurance after application of any deductibles shall be not less than eighty percent (80%) of the replacement cost of the insured property at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations, and other items normally excluded from property policies; and
- (2) Liability insurance in reasonable amounts, covering all occurrences commonly insured against for death, bodily injury, and property damage arising out of or in connection with the use, ownership, or maintenance of the common elements.

(b) If the insurance described in subsection (a) of this section is not reasonably available, the association promptly shall cause notice of that fact to be hand-delivered or sent prepaid by United States mail to all lot owners. The declaration may require the association to carry any other insurance, and the association in any event may carry any other insurance it deems appropriate to protect the association or the lot owners.

(c) Insurance policies carried pursuant to subsection (a) of this section shall provide that:

- (1) Each lot owner is an insured person under the policy to the extent of the lot owner's insurable interest;
- (2) The insurer waives its right to subrogation under the policy against any lot owner or member of the lot owner's household;
- (3) No act or omission by any lot owner, unless acting within the scope of the owner's authority on behalf of the association, will preclude recovery under the policy; and
- (4) If, at the time of a loss under the policy, there is other insurance in the name of a lot owner covering the same risk covered by the policy, the association's policy provides primary insurance.

(d) Any loss covered by the property policy under subdivision (a)(1) of this section shall be adjusted with the association, but the insurance proceeds for that loss are payable to any insurance trustee designated for that purpose, or otherwise to the association, and not to any mortgagee or beneficiary under a deed of trust. The insurance trustee or the association shall hold any insurance proceeds in trust for lot owners and lienholders as their interests may appear. Subject to the provisions of subsection (h) of this section, the proceeds shall be disbursed first for the repair or restoration of the damaged property, and lot owners and lienholders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the property has been completely repaired or restored, or the planned community is terminated.

(e) An insurance policy issued to the association does not prevent a lot owner from obtaining insurance for the lot owner's own benefit.

(f) An insurer that has issued an insurance policy under this section shall issue certificates or memoranda of insurance to the association and, upon written request, to any lot owner, mortgagee, or beneficiary under a deed of trust. The insurer issuing the policy may not cancel or refuse to renew it until 30 days after notice of the proposed cancellation or nonrenewal has

been mailed to the association, each lot owner, and each mortgagee or beneficiary under a deed of trust to whom certificates or memoranda of insurance have been issued at their respective last known addresses.

(g) Any portion of the planned community for which insurance is required under subdivision (a)(1) of this section which is damaged or destroyed shall be repaired or replaced promptly by the association unless (i) the planned community is terminated, (ii) repair or replacement would be illegal under any State or local health or safety statute or ordinance, or (iii) the lot owners decide not to rebuild by an eighty percent (80%) vote, including one hundred percent (100%) approval of owners assigned to the limited common elements not to be rebuilt. The cost of repair or replacement in excess of insurance proceeds and reserves is a common expense. If any portion of the planned community is not repaired or replaced, (i) the insurance proceeds attributable to the damaged common elements shall be used to restore the damaged area to a condition compatible with the remainder of the planned community, (ii) the insurance proceeds attributable to limited common elements which are not rebuilt shall be distributed to the owners of the lots to which those limited common elements were allocated, or to lienholders, as their interests may appear, and (iii) the remainder of the proceeds shall be distributed to all the lot owners or lienholders, as their interests may appear, in proportion to the common expense liabilities of all the lots. Notwithstanding the provisions of this subsection, G.S. 47E-2-118 (termination of the planned community) governs the distribution of insurance proceeds if the planned community is terminated.

(h) The provisions of this section may be varied or waived in the case of a planned community all of whose lots are restricted to nonresidential use.

"§ 47E-3-114. Surplus funds.

Unless otherwise provided in the declaration, any surplus funds of the association remaining after payment of or provision for common expenses, the funding of a reasonable operating expense surplus, and any prepayment of reserves shall be paid to the lot owners in proportion to their common expense liabilities or credited to them to reduce their future common expense assessments.

"§ 47E-3-115. Assessments for common expenses.

(a) Except as otherwise provided in the declaration, until the association makes a common expense assessment, the declarant shall pay all common expenses. After any assessment has been made by the association, assessments thereafter shall be made at least annually.

(b) Except for assessments under subsections (c), (d), and (e) of this section, all common expenses shall be assessed against all the lots in accordance with the allocations set forth in the declaration. Any past-due common expense assessment or installment thereof bears interest at the rate established by the association not exceeding eighteen percent (18%) per year. For planned communities created prior to January 1, 1999, interest may be charged on any past-due common expense assessment or installment only if the declaration provides for interest charges, and where the declaration does not otherwise specify the interest rate, the rate may not exceed eighteen percent (18%) per year.

(c) To the extent required by the declaration:

(1) Any common expense associated with the maintenance, repair, or replacement of a limited common element shall be assessed against the lots to which that limited common element is assigned, equally, or in any other proportion that the declaration provides;

(2) Any common expense or portion thereof benefiting fewer than all of the lots shall be assessed exclusively against the lots benefited; and

(3) The costs of insurance shall be assessed in proportion to risk and the costs of utilities shall be assessed in proportion to usage.

(d) Assessments to pay a judgment against the association may be made only against the lots in the planned community at the time the judgment was entered, in proportion to their common expense liabilities.

(e) If any common expense is caused by the negligence or misconduct of any lot owner or occupant, the association may assess that expense exclusively against that lot owner or occupant's lot.

(f) If common expense liabilities are reallocated, common expense assessments and any installment thereof not yet due shall be recalculated in accordance with the reallocated common expense liabilities.

"§ 47E-3-116. Lien for assessments.

(a) Any assessment levied against a lot remaining unpaid for a period of 30 days or longer shall constitute a lien on that lot when a claim of lien is filed of record in the office of the clerk of superior court of the county in which the lot is located in the manner provided herein. The association may foreclose the claim of lien in like manner as a mortgage on real estate under power of sale under Article 2A of Chapter 45 of the General Statutes. Unless the declaration otherwise provides, fees, charges, late charges, fines, interest, and other charges imposed pursuant to G.S. 47E-3-102, 47E-3-107, 47E-3-107A, and 47E-3-115 are enforceable as assessments under this section.

(b) The lien under this section is prior to all liens and encumbrances on a lot except (i) liens and encumbrances (specifically including, but not limited to, a mortgage or deed of trust on the lot) recorded before the docketing of the claim of lien in the office of the clerk of superior court, and (ii) liens for real estate taxes and other governmental assessments and charges against the lot. This subsection does not affect the priority of mechanics' or materialmen's liens.

(c) A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within three years after the docketing of the claim of lien in the office of the clerk of superior court.

(d) This section does not prohibit other actions to recover the sums for which subsection (a) of this section creates a lien or prohibit an association taking a deed in lieu of foreclosure.

(e) A judgment, decree, or order in any action brought under this section shall include costs and reasonable attorneys' fees for the prevailing party.

(f) Where the holder of a first mortgage or first deed of trust of record, or other purchaser of a lot obtains title to the lot as a result of foreclosure of a first mortgage or first deed of trust, such purchaser and its heirs, successors, and assigns, shall not be liable for the assessments against such

lot which became due prior to the acquisition of title to such lot by such purchaser. Such unpaid assessments shall be deemed to be common expenses collectible from all the lot owners including such purchaser, its heirs, successors, and assigns.

(g) A claim of lien shall set forth the name and address of the association, the name of the record owner of the lot at the time the claim of lien is filed, a description of the lot, and the amount of the lien claimed.

"§ 47E-3-117. Reserved.

"§ 47E-3-118. *Association records.*

(a) The association shall keep financial records sufficiently detailed to enable the association to comply with this Chapter. All financial and other records shall be made reasonably available for examination by any lot owner and the lot owner's authorized agents.

(b) The association, upon written request, shall furnish to a lot owner or the lot owner's authorized agents a statement setting forth the amount of unpaid assessments and other charges against a lot. The statement shall be furnished within 10 business days after receipt of the request and is binding on the association, the executive board, and every lot owner.

"§ 47E-3-119. *Association as trustee.*

With respect to a third person dealing with the association in the association's capacity as a trustee under G.S. 47E-2-118 following termination or G.S. 47E-3-113 for insurance proceeds, the existence of trust powers and their proper exercise by the association may be assumed without inquiry. A third person is not bound to inquire whether the association has power to act as trustee or is properly exercising trust powers, and a third person, without actual knowledge that the association is exceeding or improperly exercising its powers, is fully protected in dealing with the association as if it possessed and properly exercised the powers it purports to exercise. A third person is not bound to assure the proper application of trust assets paid or delivered to the association in its capacity as trustee.

"§ 47E-3-120. *Declaration limits on attorneys' fees.*

Except as provided in G.S. 47E-3-116, in an action to enforce provisions of the articles of incorporation, the declaration, bylaws, or duly adopted rules or regulations, the court may award reasonable attorneys' fees to the prevailing party if recovery of attorneys' fees is allowed in the declaration.

Section 2. The Revisor of Statutes shall cause to be printed with this act all relevant portions of the official comments to the North Carolina Planned Community Act and all explanatory comments of the drafters of this act, as the Revisor deems appropriate.

Section 3. This act becomes effective January 1, 1999, and applies to planned communities created on or after that date. G.S. 47E-3-102(1) through (6) and (11) through (17), G.S. 47E-3-107(a),(b), and (c), G.S. 47E-3-115, and G.S. 47E-3-116 as enacted by Section 1 of this act apply to planned communities created prior to the effective date, except that the provisions of G.S. 47E-3-116(e) as enacted by Section 1 of this act, apply to actions arising on or after the effective date.

In the General Assembly read three times and ratified this the 15th day of October, 1998.

Became law upon approval of the Governor at 2:55 p.m. on the 26th day of October, 1998.

S.B. 666

SESSION LAW 1998-200

AN ACT CONCERNING SATELLITE ANNEXATIONS BY THE CITY OF RALEIGH, PROVIDING THAT THE CITY OF RALEIGH MAY BY RESOLUTION DEEM THE CREATION OF A SELF-FUNDED RISK PROGRAM AS THE PURCHASE OF INSURANCE FOR THE PURPOSE OF WAIVING GOVERNMENTAL IMMUNITY, AND TO ANNEX AN AREA TO THE VILLAGE OF PINEHURST.

The General Assembly of North Carolina enacts:

Section 1. Section 1(a) of S.L. 1997-432 reads as rewritten:

"(a) G.S. 160A-58.1(b) is amended by adding a new subdivision to read:

'(2a) If any territory proposed for annexation under this Part is an area that another city has agreed not to annex under an agreement with the annexing city under Part 6 of this Article, then the proximity to that other city shall not be considered in applying subdivision (2) of this subsection. This subdivision applies only where the annexing city is the Town of ~~Wake Forest~~ Wake Forest or the City of Raleigh.'"

Section 2. (a) G.S. 160A-485(a) reads as rewritten:

"(a) Any city is authorized to waive its immunity from civil liability in tort by the act of purchasing liability insurance. Participation in a local government risk pool pursuant to Article 23 of General Statute Chapter 58 shall be deemed to be the purchase of insurance for the purposes of this section. Immunity shall be waived only to the extent that the city is indemnified by the insurance contract from tort liability. No formal action other than the purchase of liability insurance shall be required to waive tort immunity, and no city shall be deemed to have waived its tort immunity by any action other than the purchase of liability insurance. If a city uses a funded reserve instead of purchasing insurance against liability for wrongful death, negligence or intentional damage to personal property, or absolute liability for damage to person or property caused by an act or omission of the city or any of its officers, agents, or employees acting within the scope of their authority and the course of their employment, the city council may adopt a resolution that deems the creation of a funded reserve to be the same as the purchase of insurance under this section. Adoption of such a resolution waives the city's governmental immunity only to the extent specified in the council's resolution, but in no event greater than funds available in the funded reserve for the payment of claims."

(b) This section applies to the City of Raleigh only.

Section 2.1. (a) The corporate limits of the Village of Pinehurst are extended by adding the following described areas:

A:

A certain tract or parcel of land in Mineral Springs Township, Moore County, North Carolina, owned by Casavant Homes, Inc., described by Moore County Tax Map and Parcel # 8564 12 75 7275 and 8564 16 83

2653 and described by a petition, filed with the Village Clerk of the Village of Pinehurst:

BEGINNING at the southwesternmost corner of the tract conveyed to G. Wilson Lea in Deed Book 254 at Page 475 of the Moore County Public Registry, the said beginning corner being located in the eastern right-of-way of U.S. Highway 15-501 and running thence from the beginning, with the eastern right-of-way of U.S. Highway 15-501 N. 16° 16' E. 150 feet to a new concrete monument in said eastern right-of-way; thence, leaving said right-of-way a new line S. 85° 27.5' E. 761.03 feet to a new concrete monument located in the G. Wilson Lea Tract as described in Deed Book 759 at Page 220; running thence S. 0°0' W. 135.94 feet to a marked pine tree in the northern right-of-way of a 30 foot access way; running thence N 89° 48' W. 150 feet to an existing iron pipe, the southwesternmost corner of the said parcel described in Deed Book 759 at Page 220; running thence N. 85°27.5' W. 652.72 feet to an existing iron pipe, the beginning corner, containing 2.62 acres, more or less, and being a portion of the Grantors parcels recorded in Deed Book 254 at Page 475 and Deed Book 759 at Page 220, both of the Moore County Public Registry and being more particularly shown on that certain plat entitled "Survey for Casavant Homes, Incorporated, dated December 17, 1993, prepared by Carl A. Samuelson, III, Registered Land Surveyors, Carthage, North Carolina.

B:

A certain tract or parcel of land in Mineral Springs Township, Moore County, North Carolina, being the land described in Deed Book 274, Page 528, and having a boundary described as follows:

BEGINNING at an existing iron stake on the south bank of the big ditch, the southeast corner of Black (DB 598, P 848) and running thence as the Black line, North 01° 05' West 1,382.28 feet, crossing Nick's Creek to an old iron pipe in an old road in front of an old house, thence North 04° 55' East 121.97 feet to a new iron stake set in the line of Sadler (DB 528, P 848); thence as the Sadler line, South 89° 41' East 682.98 feet to a tall iron pipe; thence North 07° 35' East 1,856.76 feet to an existing iron pipe [tie to NCGS "BUNCH" from this pipe is North 26° 23' 44" West 1,083.83 feet ground distance - NCGS "BUNCH" N=546,148.756 E=1,667,542.648]; thence South 05° 12' West, 3,272.66 feet to an existing concrete monument on the north side of the big ditch, thence South 87° 08' West 1,556.45 feet to the BEGINNING, containing 96.01 acres, more or less, according to survey by Carl A. Samuelson, RLS, dated 1 November, 1993.

C:

A certain tract of land in Mineral Springs Township, Moore County, North Carolina, believed to be a part of the D.A. McKeithan Estate property, more particularly described as follows:

BEGINNING at an existing concrete monument, the southwest corner of Parcel #1 above and running thence as an extension of its eastern boundary South 05° 12' West to a point on the south bank of a big ditch in common with the Pinehurst Farms north boundary; running thence as the north line

of the Pinehurst Farms line, up the ditch about 1980 feet to an old concrete monument on its south bank, a common corner with Parcel #1 above; thence as the reverse of the southern line of Parcel #1 above, North 87° 08' East slightly less than 1556.45 feet to the beginning.

(b) Until and unless the area annexed by this section becomes contiguous to the primary corporate limits of the Village of Pinehurst by future annexations, the corporate limits of the area annexed by this section shall be considered satellite corporate limits within the meaning of Part 4 of Article 4A of Chapter 160A of the General Statutes and they shall not be considered to be external boundaries for the purposes of Parts 2 and 3 of Article 4A of Chapter 160A of the General Statutes.

(c) Real and personal property in the territory annexed pursuant to this section is subject to municipal taxes as provided in G.S. 160A-58.10.

(d) This section becomes effective December 1, 1998.

Section 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 26th day of October, 1998.

Became law on the date it was ratified.

S.B. 1312

SESSION LAW 1998-201

AN ACT TO ALLOW CERTAIN COUNTIES TO ACQUIRE PROPERTY FOR USE BY THEIR COUNTY BOARDS OF EDUCATION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 153A-158.1, as rewritten by S.L. 1998-33 and S.L. 1998-48, reads as rewritten:

"§ 153A-158.1. *Acquisition and improvement of school property in certain counties.*

(a) **Acquisition by County.** -- A county may acquire, by any lawful method, any interest in real or personal property for use by a school administrative unit within the county. In exercising the power of eminent domain a county shall use the procedures of Chapter 40A. The county shall use its authority under this subsection to acquire property for use by a school administrative unit within the county only upon the request of the board of education of that school administrative unit and after a public hearing.

(b) **Construction or Improvement by County.** -- A county may construct, equip, expand, improve, renovate, or otherwise make available property for use by a school administrative unit within the county. The local board of education shall be involved in the design, construction, equipping, expansion, improvement, or renovation of the property to the same extent as if the local board owned the property.

(c) **Lease or Sale by Board of Education.** -- Notwithstanding the provisions of G.S. 115C-518 and G.S. 160A-274, a local board of education may, in connection with additions, improvements, renovations, or repairs to all or part of any of its property, lease or sell the property to the board of commissioners of the county in which the property is located for any price negotiated between the two boards.

(d) Board of Education May Contract for Construction. -- Notwithstanding the provisions of G.S. 115C-40 and G.S. 115C-521, a local board of education may enter into contracts for the erection of school buildings upon sites owned in fee simple by one or more counties in which the local school administrative unit is located.

(e) Scope. -- This section applies to Alamance, Alexander, Alleghany, Ashe, Avery, Bladen, Brunswick, Burke, Cabarrus, Caldwell, Camden, Carteret, Catawba, Cherokee, Chowan, Columbus, Cumberland, Currituck, Dare, Davidson, Davie, Duplin, Durham, Edgecombe, Forsyth, Franklin, Gaston, Gates, Graham, Greene, Guilford, Halifax, Harnett, Haywood, Henderson, Hoke, Hyde, Iredell, Jackson, Johnston, Jones, Lee, Lenoir, Lincoln, Macon, Madison, Martin, Mitchell, Moore, Nash, New Hanover, Onslow, Orange, Pasquotank, Pender, Perquimans, Person, Pitt, Randolph, Richmond, Robeson, Rockingham, Rowan, Sampson, Scotland, Stanly, Stokes, Surry, Union, Vance, Wake, Wilkes, Wilson, Watauga, and Wayne Watauga, Wayne, Wilkes, and Wilson Counties."

Section 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 26th day of October, 1998.

Became law on the date it was ratified.

S.B. 1260

SESSION LAW 1998-202

AN ACT TO DEVELOP A PLAN OF REORGANIZATION FOR THE TRANSFER OF THE DIVISION OF YOUTH SERVICES OF THE DEPARTMENT OF HEALTH AND HUMAN SERVICES AND THE DIVISION OF JUVENILE SERVICES OF THE ADMINISTRATIVE OFFICE OF THE COURTS, TO ESTABLISH THE OFFICE OF JUVENILE JUSTICE, TO AMEND AND RECODIFY THE NORTH CAROLINA JUVENILE CODE, AND TO CONFORM THE GENERAL STATUTES TO THE RECODIFICATION OF THE JUVENILE CODE, AS RECOMMENDED BY THE COMMISSION ON JUVENILE CRIME AND JUSTICE.

The General Assembly of North Carolina enacts:

PART I. THE TRANSFER OF THE DIVISION OF YOUTH SERVICES AND THE JUVENILE SERVICES DIVISION TO THE OFFICE OF THE GOVERNOR AND CONFORMING STATUTORY CHANGES

Section 1. (a) Articles 24 and 24A of Chapter 7A of the General Statutes, Article 2 of Chapter 110 of the General Statutes, and Chapter 134A of the General Statutes are repealed.

(b) Chapter 147 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 3C.

"Office of Juvenile Justice.

"Part 1. Creation of Office.

"§ 147-33.30. Creation of the Office of Juvenile Justice.

(a) There is established within the Office of the Governor the Office of Juvenile Justice ("Office"). All executive and administrative powers, duties,

and functions are vested in the Office, excluding those of the General Assembly and its agencies, the General Court of Justice, and the administrative agencies created pursuant to Article IV of the Constitution of North Carolina, and higher education previously vested by law in the several State agencies.

(b) Except as modified in this Article, the Governor has the authority, powers, and duties over the Office that are assigned to the Governor and the head of department pursuant to Article I of Chapter 143B of the General Statutes, G.S. 143A-6(a), and the Constitution and other laws of this State.

"§ 147-33.31. Transfer of Juvenile Services Division authority to the Office of Juvenile Justice.

(a) All (i) statutory authority, powers, duties, and functions, including rule making, budgeting, and purchasing, (ii) records, (iii) personnel, personnel positions, and salaries, (iv) property, and (v) unexpended balances of appropriations, allocations, reserves, support costs, and other funds of the Juvenile Services Division of the Administrative Office of the Courts are transferred to and vested in the Office of Juvenile Justice. This transfer has all of the elements of a Type I transfer, as defined in G.S. 143A-6.

(b) The Office shall be considered a continuation of the Juvenile Services Division of the Administrative Office of the Courts for the purpose of succession to all rights, powers, duties, and obligations of the Division and of those rights, powers, duties, and obligations exercised by the Administrative Office of the Courts on behalf of the Division. Where the Juvenile Services Division is referred to by law, contract, or other document, that reference shall apply to the Office. Where the Administrative Office of the Courts is referred to by contract or other document, where the Administrative Office of the Courts is acting on behalf of the Juvenile Services Division, that reference shall apply to the Office.

(c) All institutions previously operated by the Juvenile Services Division of the Administrative Office of the Courts and the present central office of the Juvenile Services Division, including land, buildings, equipment, supplies, personnel, or other properties rented or controlled by the Division or by the Administrative Office of the Courts for the Division, shall be administered by the Office of Juvenile Justice.

"§ 147-33.32. Transfer of Division of Youth Services authority to the Office of Juvenile Justice.

(a) All (i) statutory authority, powers, duties, and functions, including rule making, budgeting, and purchasing, (ii) records, (iii) personnel, personnel positions, and salaries, (iv) property, and (v) unexpended balances of appropriations, allocations, reserves, support costs, and other funds of the Division of Youth Services of the Department of Health and Human Services are transferred to and vested in the Office of Juvenile Justice. This transfer has all of the elements of a Type I transfer, as defined in G.S. 143A-6.

(b) The Office shall be considered a continuation of the Division of Youth Services of the Department of Health and Human Services for the purpose of succession to all rights, powers, duties, and obligations of the Division and of those rights, powers, duties, and obligations exercised by the Department on behalf of the Division. Where the Division of Youth Services is referred to by law, contract, or other document, that reference shall apply to the

Office. Where the Department of Health and Human Services is referred to by contract or other document, where the Department is acting on behalf of the Division of Youth Services, that reference shall apply to the Office.

(c) All institutions previously operated by the Division of Youth Services of the Department of Health and Human Services and the present central office of the Division of Youth Services, including land, buildings, equipment, supplies, personnel, or other properties rented or controlled by the Division or by the Department for the Division, shall be administered by the Office of Juvenile Justice.

"Part 2. General Provisions.

"§ 147-33.33. Definitions.

The definitions set forth in G.S. 7A-517 apply to this Article, unless modified in this Article.

"§ 147-33.34. Duties, powers, and head of the Office of Juvenile Justice.

(a) The Governor shall be responsible for effectively and efficiently organizing the Office to promote the policy of the State as set forth in this Article and to promote public safety and prevent the commission of delinquent acts by juveniles. The duties and powers of the Office and of the Governor, as head of the Office, are to:

- (1) Give leadership to the implementation as appropriate of State policy which requires that training schools be phased out as populations diminish.
- (2) Close a State training school when its operation is no longer justified and to transfer State funds appropriated for the operation of any training school which is closed to fund community-based programs or to purchase care or services for predelinquents, delinquents or status offenders in community-based or other appropriate programs or to improve the efficiency of existing training schools, provided such actions are approved by the Advisory Budget Commission.
- (3) Develop a sound admission or intake program to juvenile facilities, including the requirement of a careful evaluation of the needs of each juvenile prior to acceptance and placement.
- (4) Operate juvenile facilities and implement programs that meet the needs of juveniles receiving services and that assist them to become productive, responsible citizens.
- (5) Adopt rules and regulations to implement the provisions of this Article and the responsibilities of the Office under Subchapter XI of Chapter 7A of the General Statutes. The Governor may adopt rules applicable to local human services agencies providing juvenile court and delinquency prevention services for the purpose of program evaluation, fiscal audits, and collection of third-party payments.
- (6) Ensure a statewide and uniform system of juvenile intake, protective supervision, probation and aftercare services in all district court districts of the State to provide appropriate, adequate, and uniform services to all juveniles who are alleged or found to be undisciplined or delinquent.

- (7) Establish procedures for substance abuse testing for juveniles adjudicated delinquent for substance abuse offenses.
- (8) Plan, develop, and coordinate comprehensive multidisciplinary services and programs statewide for the prevention of juvenile delinquency, early intervention, and rehabilitation of juveniles.
- (9) Develop standards and approve yearly program evaluations and make recommendations to the General Assembly concerning continuation funding based on the evaluations.
- (10) Collect expense data for every program operated and contracted by the Office.
- (11) Develop a formula for funding on a matching basis for juvenile court and delinquency prevention services as provided for in this Article. This formula shall be based upon the county's or counties' relative ability to fund community-based programs for juveniles.

Local governments receiving State matching funds for programs under the provisions of this Article must maintain the same overall level of effort that existed at the time of the filing of the county assessment of juvenile needs with the Office.

- (12) Assist local governments and private service agencies in the development of juvenile court services and delinquency prevention services, and to provide information on the availability of potential funding sources and assistance in making application for needed funding.
- (13) Assist the Criminal Justice Information Network Governing Board with administering a comprehensive juvenile justice information system to collect data and information about delinquent juveniles for the purpose of developing treatment and intervention plans and allowing reliable assessment and evaluation of the effectiveness of rehabilitative and preventive services provided to delinquent juveniles.
- (14) Coordinate State-level services in relation to delinquency prevention and juvenile court services so that any citizen may go to one place in State government to receive information about available juvenile services.
- (15) Appoint the chief court counselor in each district court district upon the recommendation of the chief district court judge of that district.
- (16) Develop a statewide plan for training and professional development of chief court counselors, court counselors, and other personnel responsible for the care, supervision, and treatment of juveniles, including attendance at appropriate professional meetings and opportunities for educational leave for academic study.
- (17) Study issues related to qualifications, salary ranges, appointment of personnel on a merit basis, including chief court counselors, court counselors, secretaries, and other appropriate personnel, at the State and district levels in order to adopt appropriate policies and procedures governing personnel.

- (18) Have all other powers of a department head in relation to juvenile services, juvenile facilities, or juvenile programs as provided by this Article, Chapter 143B of the General Statutes, or as provided by any other appropriate State law.

(b) Where Office statistics indicate the presence of minority youth in juvenile facilities disproportionate to their presence in the general population, the Office shall develop and recommend appropriate strategies designed to ensure fair and equal treatment in the juvenile justice system.

(c) The Office may provide consulting services and technical assistance to courts, law enforcement agencies, and other agencies, local governments, and public and private organizations, and may develop or assist Juvenile Crime Prevention Councils in developing community needs, assessments, and programs relating to the prevention and treatment of delinquent and undisciplined behavior.

(d) The Office shall develop a cost-benefit model and apply the model to each State-funded program. Program commitment and recidivism rates shall be components of the model. In developing the model, the Office shall consider the recommendations of the State Advisory Council on Juvenile Justice and Delinquency Prevention.

"§ 147-33.35. Authority to contract with other entities.

(a) The Office may contract with any governmental agency, person, association, or corporation for the accomplishment of its duties and responsibilities provided that the expenditure of funds pursuant to these contracts shall be for the purposes for which the funds were appropriated and is not otherwise prohibited by law.

(b) The Office may enter into contracts with, and act as intermediary between, any federal government agency and any county of this State for the purpose of assisting the county to recover monies expended by a county-funded financial assistance program; and, as a condition of assistance, the county shall agree to hold and save harmless the Office against any claims, loss, or expense which the Office might incur under the contracts by reason of any erroneous, unlawful, or tortious act or omission of the county or its officials, agents, or employees.

(c) The Office and any other appropriate State or local agency may purchase services from public or private agencies providing delinquency prevention programs or juvenile court services, including parenting responsibility classes. The programs shall meet State standards. As institutional populations are reduced, the Office may divert State funds appropriated for institutional programs to purchase the services pursuant to the provisions of the Executive Budget Act.

(d) Each programmatic, residential, and service contract or agreement entered into by the Office shall include a cooperation clause to ensure compliance with the Office's quality assurance requirements and cost-accounting requirements.

"§ 147-33.36. Authority to assist private nonprofit foundations.

The Office may provide appropriate services or allow employees of the Office to assist any private nonprofit foundation which works directly with services or programs of the Office and whose sole purpose is to support the services and programs of the Office. An Office employee shall be allowed to

work with a foundation no more than 20 hours in any one month. These services are not subject to the provisions of Chapter 150B of the General Statutes.

The board of directors of each private, nonprofit foundation shall secure and pay for the services of the Department of State Auditor or employ a certified public accountant to conduct an annual audit of the financial accounts of the foundation. The board of directors shall transmit to the Office a copy of the annual financial audit report of the private nonprofit foundation.

"§ 147-33.37. Annual report.

On or before April 1 each year, beginning with the year 2000, the Office shall report to the General Assembly on the effectiveness and cost benefit of every program operated and contracted by the Office and a summary of the local programs that receive State funding. The report shall include the most current institutional populations of juveniles being served by the Office, a comparison of the costs of the services, and a ranking of all programs that provide services to juveniles. The Office shall submit the report to the various State agencies providing services to juveniles.

"Part 3. Juvenile Facilities.

"§ 147-33.38. Juvenile facilities.

The Office shall be responsible for administration of statewide programs to provide any juvenile in a juvenile facility with appropriate treatment according to the juvenile's needs, including educational, clinical and psychological, psychiatric, social, medical, vocational, and recreational services or programs.

"§ 147-33.39. Authority to provide necessary medical or surgical care.

The Office may provide any medical and surgical treatment necessary to preserve the life and health of juveniles committed to the custody of the Office, provided that no surgical operation may be performed except as authorized in G.S. 148-22.2.

"§ 147-33.40. Compensation to juveniles committed to the Office.

Juveniles who have been committed to the Office may be compensated for work or participation in training programs at rates approved by the Office within available funds. The Office may provide for a reasonable allowance to the juvenile for incidental personal expenses, and any balance of the juvenile's earnings remaining at the time the juvenile is released shall be paid to the juvenile or the juvenile's parent or guardian. The Office is authorized to accept grants or funds from any source to compensate juveniles as provided under this section.

"§ 147-33.41. Visits and community activities.

(a) The Office shall encourage visits by parents or guardians and responsible relatives of juveniles committed to the custody of the Office.

(b) The Office shall develop a program of home visits for juveniles in the custody of the Office. In developing the program, the Office shall adopt criteria that promote the protection of the public and the best interests of the juvenile.

"§ 147-33.42. Regional detention services.

The Office shall be responsible for juvenile detention services, including the development of a statewide plan for regional juvenile detention services

that offer juvenile detention care of sufficient quality to meet State standards to any juvenile requiring juvenile detention care within the State in a detention home or regional detention home as follows:

- (1) The Office shall plan with the counties operating a county detention home to provide regional juvenile detention services to surrounding counties, except that the Office shall have discretion in defining the geographical boundaries of the regions based on negotiations with affected counties, distances, availability of juvenile detention care that meets State standards, and other appropriate factors.
- (2) The Office may plan with any county that has space within its county jail system to use the existing space for a county detention home when needed, if the space meets the State standards for a detention home and meets all of the requirements of G.S. 153A-221. The use of space within the county jail system shall be structured to ensure that juveniles would not be able to converse with, see, or be seen by the adult population, and juveniles housed in a space within a county jail shall be supervised closely.
- (3) The Office shall plan for and administer regional detention homes, including careful planning on location, architectural design, construction, and administration of a program to meet the needs of juveniles in juvenile detention care. The physical facility of a regional detention home shall comply with all applicable State and federal standards. The programs of a regional detention home shall comply with the standards established by the Office.

" § 147-33.43. State subsidy to county detention homes.

The Office shall administer a State subsidy program to pay a county that provides juvenile detention services and meets State standards a certain per diem per juvenile. In general, this per diem should be fifty percent (50%) of the total cost of caring for a juvenile from within the county and one hundred percent (100%) of the total cost of caring for a juvenile from another county. Any county placing a juvenile in a detention home in another county shall pay fifty percent (50%) of the total cost of caring for the juvenile to the Office. The exact funding formulas may be varied by the Office to operate within existing State appropriations or other funds that may be available to pay for juvenile detention care.

" § 147-33.44. Authority for implementation.

In order to allow for effective implementation of a statewide regional approach to juvenile detention, the Office may:

- (1) Release or transfer a juvenile from one detention home to another when necessary to appropriately administer the juvenile's detention.
- (2) Plan with counties operating county detention homes to provide regional services and to upgrade physical facilities to contract with counties for services and care, and to pay State subsidies to counties providing regional juvenile detention services that meet State standards.

- (3) Allow law enforcement officers or other appropriate employees of local government to be reimbursed by the State for the costs of transportation of a juvenile to and from any juvenile detention home.
- (4) Seek funding for juvenile detention services from federal sources, and to accept gifts of funds from public or private sources.

"Part 4. Juvenile Court Services.

"§ 147-33.45. Duties and powers of chief court counselors.

The chief court counselor in each district court district appointed as provided by this Article may:

- (1) Appoint court counselors, secretaries, and other personnel authorized by the Office in accordance with the personnel policies adopted by the Office.
- (2) Supervise and direct the program of juvenile intake, protective supervision, probation, and aftercare within the district court district.
- (3) Provide in-service training for staff as required by the Office.
- (4) Keep any records and make any reports requested by the Office in order to provide statewide data and information about juvenile needs and services.

"§ 147-33.46. Duties and powers of juvenile court counselors.

As the court or the chief court counselor may direct or require, all juvenile court counselors shall have the following powers and duties:

- (1) Secure or arrange for such information concerning a case as the court may require before, during, or after the hearing.
- (2) Prepare written reports for the use of the court.
- (3) Appear and testify at court hearings.
- (4) Assume custody of a juvenile as authorized by G.S. 7A-571, or when directed by court order.
- (5) Furnish each juvenile on probation or protective supervision and the juvenile's parents, guardian, or custodian with a written statement of the juvenile's conditions of probation or protective supervision, and consult with the juvenile's parents, guardian, or custodian so that they may help the juvenile comply with the conditions.
- (6) Keep informed concerning the conduct and progress of any juvenile on probation or under protective supervision through home visits or conferences with the parents or guardian and in other ways.
- (7) See that the conditions of probation are complied with by the juvenile, or to bring any juvenile who violates the juvenile's probation to the attention of the court.
- (8) Make periodic reports to the court concerning the adjustment of any juvenile on probation or under court supervision.
- (9) Keep any records of the juvenile's work as the court may require.
- (10) Account for all funds collected from juveniles.
- (11) Serve necessary court documents pertaining to delinquent and undisciplined juvenile matters.

- (12) Assume custody of juveniles under the jurisdiction of the court when necessary for the protection of the public, or the juvenile, and necessary to carry out the responsibilities of court counselors under this section and under Subchapter XI of Chapter 7A of the General Statutes.
- (13) Use reasonable force and restraint necessary to secure custody assumed under subdivision (12) of this section.
- (14) Provide supervision for a juvenile transferred to the counselor's supervision from another court or another state, and provide supervision for any juvenile released from an institution operated by the Office when requested by the Office to do so.
- (15) Assist in the development of aftercare and the supervision of juveniles.
- (16) Have any other duties as the court may direct.

"Part 5. Comprehensive Juvenile Delinquency and Substance Abuse Prevention Plan.

"§ 147-33.47. Comprehensive Juvenile Delinquency and Substance Abuse Prevention Plan.

(a) The Office shall develop a comprehensive juvenile delinquency and substance abuse prevention plan and shall coordinate with county Juvenile Crime Prevention Councils, as provided in G.S. 147-33.48, for implementation of a continuum of services and programs at the community level. The Office shall ensure that localities are informed about best practices in juvenile delinquency and substance abuse prevention.

(b) The Office shall ensure that the plan contains the following:

- (1) Identification of the risk factors at the developmental stages of a juvenile's life that may result in delinquent behavior.
- (2) Identification of the protective factors that families, schools, communities, and the State must support to reduce the risk of juvenile delinquency.
- (3) Programmatic concepts that are effective in preventing juvenile delinquency and substance abuse and that should be made available as basic services in the communities, including:
 - a. Early intervention programs and services.
 - b. In-home training and community-based family counseling and parent training.
 - c. Adolescent and family substance abuse prevention services, including alcohol abuse prevention services, and substance abuse education.
 - d. Programs and activities offered before and after school hours.
 - e. Life and social skills training programs.
 - f. Classes or seminars that teach conflict resolution, problem solving, and anger management.
 - g. Services that provide personal advocacy, including mentoring relationships, tutors, or other caring adult programs.

(c) Prior to the implementation of the Office's plan prescribed in this section, the Office shall report to the State Advisory Council on Juvenile Justice and Delinquency Prevention, as established in G.S. 147-33.56.

(d) The Office shall cooperate with all other affected State agencies and entities in implementing this section.

"Part 6. Juvenile Crime Prevention Councils.

"§ 147-33.48. *Legislative intent.*

It is the intent of the General Assembly to prevent juveniles who are at risk from becoming delinquent. The primary intent of this Part is to develop community-based alternatives to training schools and to provide community-based delinquency and substance abuse prevention strategies and programs. Additionally, it is the intent of the General Assembly to provide noninstitutional dispositional alternatives that will protect the community and the juveniles.

These programs and services shall be planned and organized at the community level and developed in partnership with the State. These planning efforts shall include appropriate representation from local government, local public and private agencies serving juveniles and their families, local business leaders, citizens with an interest in youth problems, youth representatives, and others as may be appropriate in a particular community. The planning bodies at the local level shall be the Juvenile Crime Prevention Councils.

"§ 147-33.49. *Creation; method of appointment; membership; chair and vice-chair.*

(a) As a prerequisite for a county receiving funding for juvenile court services and delinquency prevention programs, the board of county commissioners shall appoint a Juvenile Crime Prevention Council. The Juvenile Crime Prevention Council shall consist of not more than 25 members and should include, if possible, the following:

- (1) The local school superintendent(s), or that person's designee(s);
- (2) A chief of police in the county;
- (3) The local sheriff, or that person's designee;
- (4) The district attorney, or that person's designee;
- (5) The chief court counselor, or that person's designee;
- (6) The director of the area mental health, developmental disabilities, and substance abuse authority, or that person's designee;
- (7) The director of the county department of social services, or consolidated human services agency, or that person's designee;
- (8) The county manager, or that person's designee;
- (9) A substance abuse professional;
- (10) A member of the faith community;
- (11) A county commissioner;
- (12) A person under the age of 21;
- (13) A juvenile defense attorney;
- (14) The chief district court judge, or a district court judge designated by the chief district court judge;
- (15) A member of the business community;
- (16) The local health director, or that person's designee;
- (17) A representative from the United Way or other nonprofit agency;
- (18) A representative of a local parks and recreation program; and
- (19) Up to seven members of the public to be appointed by the county board of commissioners.

The county board of commissioners shall modify the Council's membership as necessary to ensure that Council members reflect the racial and socioeconomic diversity of the community and to minimize potential conflicts of interest by members.

(b) Two or more counties may establish a multicounty Juvenile Crime Prevention Council pursuant to subsection (a) of this section. The membership shall be representative of each participating county.

(c) The chair and vice-chair shall be elected annually by the members of the Council.

"§ 147-33.50. Terms of appointment.

Each member of a Juvenile Crime Prevention Council shall serve for a term of two years. Members may be reappointed. Terms of appointment shall begin January 1, 1999. In order to provide for staggered terms, persons appointed for the positions designated in subdivisions (9), (10), (12), (15), (17), and (18) of G.S. 147-33.49(a) shall be for an initial one-year term and two-year terms thereafter.

"§ 147-33.51. Vacancies; removal.

Appointments to fill vacancies shall be for the remainder of the former member's term.

Members shall only be removed for misfeasance, malfeasance, or nonfeasance as determined by the board of county commissioners.

"§ 147-33.52. Meetings; quorum.

Councils shall meet at least once per month, or more often if a meeting is called by the chair.

A majority of members shall constitute a quorum.

"§ 147-33.53. Compensation of members.

Members of Juvenile Crime Prevention Councils shall receive no compensation but may receive a per diem in such an amount as may be established by the board of county commissioners.

"§ 147-33.54. Powers and duties.

(a) The Councils shall annually review the needs of juveniles in the county who are at risk of delinquency or who have been adjudicated undisciplined or delinquent and the resources available to address those needs. The Council shall develop and advertise a request for proposal process and submit a written plan of action for the expenditure of juvenile sanction and prevention funds to the board of county commissioners for its approval. Upon the county's authorization, the plan shall be submitted to the Office for final approval and subsequent implementation.

(b) The Councils shall ensure that appropriate intermediate dispositional options are available and shall prioritize funding for dispositions of intermediate and community level sanctions for court-adjudicated juveniles pursuant to minimum standards adopted by the Office.

(c) The Councils shall perform the following functions on an ongoing basis:

- (1) Assess the needs of juveniles in the community, evaluate the adequacy of resources available to meet those needs, and develop or propose ways to address unmet needs;

- (2) Evaluate the performance of juvenile services and programs in the community. The Council shall evaluate each funded program as a condition of continued funding;
- (3) Increase public awareness of the causes of delinquency and of strategies to reduce the problem;
- (4) Develop strategies to intervene and appropriately respond to and treat the needs of juveniles at risk of delinquency through appropriate risk assessment instruments;
- (5) Provide funds for services for treatment, counseling, or rehabilitation for juveniles and their families, including court-ordered parenting responsibility classes; and
- (6) Plan for the establishment of a permanent funding stream for delinquency prevention services.

(d) The Councils may examine the benefits of joint program development between counties within the same judicial district.

"§ 147-33.55. Funding for programs.

(a) The Office shall develop a funding mechanism for programs that meet the standards as developed under the provisions of this Part. The Office shall ensure that the guidelines for the State/local partnership's funding process include the following requirements:

- (1) Fund effective programs. -- The Office shall fund programs that it determines to be effective in preventing delinquency and recidivism. Programs that have proven to be ineffective shall not be funded;
- (2) Use a formula for the distribution of funds. -- A funding formula shall be developed that ensures that even the smallest counties will be able to provide the basic prevention and alternatives services to juveniles in their communities;
- (3) Allow and encourage local flexibility. -- A vital component of the State/local partnership established by this section is local flexibility to determine how best to allocate prevention and alternatives funds; and
- (4) Combine resources. -- Counties shall be allowed and encouraged to combine resources and services.

(b) The Office shall adopt rules to implement this section, and the Office shall provide technical assistance to Juvenile Crime Prevention Councils and shall ensure that the Juvenile Crime Prevention Councils evaluate all State-funded programs and services on an ongoing and regular basis.

"Part 7. State Advisory Council on Juvenile Justice and Delinquency Prevention.

"§ 147-33.56. Creation of Council; purpose; members; duties.

(a) Creation. -- There is created the State Advisory Council on Juvenile Justice and Delinquency Prevention. The Council shall be located within the Office for organizational, budgetary, and administrative purposes.

(b) Purpose. -- The purpose of the Council is to review and advise the Office in the development of a comprehensive interagency plan to reduce juvenile delinquency and substance abuse and to coordinate efforts among State agencies providing services and supervision to juveniles who are at risk

of delinquency and for juveniles who have been adjudicated of delinquent and undisciplined behavior.

(c) Membership. -- The Council shall consist of 19 members as follows:

- (1) Five persons appointed by the Governor, one of whom is a private citizen who has demonstrated an interest in and commitment to juvenile justice issues.
- (2) Four persons appointed by the Chief Justice of the Supreme Court.
- (3) The following persons, or their designees, ex officio:
 - a. The Governor.
 - b. The Chief Justice of the Supreme Court.
 - c. The President Pro Tempore of the Senate.
 - d. The Speaker of the House of Representatives.
 - e. The Director of the Administrative Office of the Courts.
 - f. The Superintendent of Public Instruction.
 - g. The Secretary of the Department of Administration.
 - h. The Secretary of the Department of Health and Human Services.
 - i. The Secretary of the Department of Correction.
 - j. The Secretary of the Department of Crime Control and Public Safety.

(d) Terms. -- Members, other than ex officio members, shall serve for two-year terms, beginning January 1, 1999, with no prohibition against being reappointed, except initial appointments shall be for terms as follows:

- (1) The Governor shall initially appoint three members for terms of two years and two members for terms of three years.
- (2) The Chief Justice of the Supreme Court shall initially appoint two members for terms of two years and two members for terms of three years.

(e) Chair. -- The Governor and Chief Justice of the Supreme Court shall serve as cochairs of the Council.

(f) Vacancies. -- A vacancy on the Council resulting from the resignation of a member or otherwise shall be filled in the same manner in which the original appointment was made, and the term shall be for the balance of the unexpired term.

(g) Compensation. -- The Council members shall receive no salary as a result of serving on the Council but shall receive per diem, subsistence, and travel expenses in accordance with the provisions of G.S. 120-3.1, 138-5, and 138-6, as applicable.

(h) Removal. -- Members may be removed in accordance with G.S. 143B-13 as if that section applied to this Article.

(i) Meetings. -- The chair shall convene the Council. Meetings shall be held as often as necessary but not less than four times a year.

(j) Quorum. -- A majority of the members of the Council shall constitute a quorum for the transaction of business. The affirmative vote of a majority of the members present at meetings of the Council shall be necessary for action to be taken by the Council.

"§ 147-33.57. Powers and duties of the Council.

The Council shall have the following powers and duties:

- (1) Advise the Office in the review of the State's juvenile justice planning, the development of the community juvenile justice councils, and the development of a formula for the distribution of funds to Juvenile Crime Prevention Councils.
- (2) Advise all State agencies serving juveniles for the purpose of developing a consistent philosophy with regard to providing services to juveniles and promoting collaboration and the efficient and effective delivery of services to juveniles and families through State, local, and district programs and fully address problems of collaboration across State agencies with the goal of serving juveniles.
- (3) Review and comment on juvenile justice, delinquency prevention, and juvenile services grant applications prepared for submission under any federal grant program by any governmental entity of the State.
- (4) Review the juvenile justice system's operation and prioritization of funding needs.
- (5) Review the progress and accomplishment of State and local juvenile justice, delinquency prevention, and juvenile services projects.
- (6) Develop recommendations concerning the establishment of priorities and needed improvements with respect to juvenile justice, delinquency prevention, and juvenile services and report its recommendations to the General Assembly on or before March 1 each year, beginning in the year 2000.
- (7) Review and comment on the proposed budget for the Office."

(c) All juveniles in the custody or placement responsibility of the Division of Youth Services of the Department of Health and Human Services, as of January 1, 1999, are hereby transferred effective on that date to the custody or placement responsibility of the Office of Juvenile Justice. All juveniles under the supervision of the Division of Juvenile Services of the Administrative Office of the Courts and all juveniles for whom a juvenile petition is pending as of January 1, 1999, are hereby transferred effective on that date to the supervision or administrative responsibility of the Office of Juvenile Justice.

(d) Beginning January 1, 1999, the Office of Juvenile Justice shall have all the authority, powers, and duties of the Division of Youth Services of the Department of Health and Human Services and the Juvenile Services Division of the Administrative Office of the Courts pursuant to Article 3C of Chapter 147 of the General Statutes, as enacted in Section 1(b) of this act. Effective January 1, 1999, the terms "Division", "Division of Youth Services", "Division of Juvenile Services", "Juvenile Services Division", "Administrative Office of the Courts", "Director of Youth Services", "Director of the Division of Youth Services", "Administrator for Juvenile Services", and "Administrator of Juvenile Services" as used in Subchapter XI of Chapter 7A of the General Statutes shall refer to the Office of Juvenile Justice established in Section 1(b) of this act.

(e) The Office of the Governor shall report to the Joint Legislative Commission on Governmental Operations and to the House and Senate

Appropriations Committees on or before May 1, 1999, on the organizational structure and staffing of the Office of Juvenile Justice. The report shall include:

- (1) The total budget for the 1998-99 fiscal year and the proposed budget for 1999-2000 fiscal year, including the source of funds.
- (2) A summary of unexpended balances of appropriations, allocations, reserves, and support costs transferred from the Division of Youth Services of the Department of Health and Human Services and of the Juvenile Services Division of the Administrative Office of the Courts.
- (3) A list of personnel positions, including any personnel positions that have been reclassified, abolished, or established as part of the new structure and the differences between old and new salaries.
- (4) An organization chart of all proposed and operating programs, including a summary of the status of the development of the Juvenile Crime Prevention Councils and the allocation of funding for local programs.

Section 2. (a) G.S. 147-33.33, as enacted by Section 1 of this act, reads as rewritten:

"§ 147-33.33. *Definitions.*

The definitions set forth in ~~G.S. 7A-517~~ G.S. 7B-1501 apply to this Article, unless modified in this Article."

(b) G.S. 147-33.34(5), as enacted by Section 1 of this act, reads as rewritten:

- "(5) To adopt rules and regulations to implement the provisions of this Article and the responsibilities of the Office under ~~Subchapter XI of Chapter 7A~~ Chapter 7B of the General Statutes. The Governor may adopt rules applicable to local human services agencies providing juvenile court and delinquency prevention services for the purpose of program evaluation, fiscal audits, and collection of third-party payments."

(c) G.S. 147-33.41, as enacted by Section 1 of this act, reads as rewritten:

"§ 147-33.41. *Visits and community activities.*

(a) The Office shall encourage visits by parents or guardians and responsible relatives of juveniles committed to the custody of the Office.

(b) The Office shall develop a program of home visits for juveniles in the custody of the ~~Office~~ Office, after the juvenile has been in the custody of the Office for a period of at least six months. In developing the program, the Office shall adopt criteria that promote the protection of the public and the best interests of the juvenile."

(d) G.S. 147-33.46(4), as enacted by Section 1 of this act, reads as rewritten:

- "(4) To assume custody of a juvenile as authorized by ~~G.S. 7A-571~~, G.S. 7B-1900, or when directed by court order."

(e) G.S. 147-33.46(12), as enacted by Section 1 of this act, reads as rewritten:

"(12) To assume custody of juveniles under the jurisdiction of the court when necessary for the protection of the public, or the juvenile, and necessary to carry out the responsibilities of court counselors under this section and under ~~Subchapter XI of Chapter 7A, Chapter 7B~~ of the General Statutes."

(f) Effective July 1, 1999, the Revisor of Statutes shall substitute the term "post-release supervision" for the term "aftercare" and the term "detention facility" for the terms "detention home" and "regional detention home" everywhere those terms appear in Article 3C of Chapter 147 of the General Statutes, as enacted in Section 1 of this act.

PART II. PLAN OF REORGANIZATION

Section 3. The Governor shall develop a proposed plan of reorganization to transfer all authority, powers, duties, and functions of the Division of Youth Services of the Department of Health and Human Services and of the Juvenile Services Division of the Administrative Office of the Courts, which are temporarily transferred to the Office of the Governor in Section 1 of this act, to an existing principal State department, or in the alternative, to a new principal State department. While the Division of Youth Services and the Juvenile Services Division ("Divisions") are consolidated under the Office of the Governor, the Governor shall consider the organizational structure, the operating budgets, and the duties and requirements of the Divisions to determine how those Divisions can operate most effectively and efficiently.

As part of the development of the plan of reorganization, the Governor shall conduct a study to determine alternative organizational structures for managing State juvenile programs and shall consider the feasibility and advisability of transferring the authority, powers, duties, and functions of the Divisions to an existing principal State department or in the alternative, to a new principal State department. The Governor shall review all agency divisions, councils, and programs that provide services to and treatment of juveniles, including other divisions of the Department of Health and Human Services, the Center for the Prevention of School Violence, School Resource Officers, and the Guardian ad Litem Program of the Administrative Office of the Courts to determine whether the agency divisions, councils, or programs would operate more effectively and efficiently if consolidated under the plan of reorganization. The Governor shall also study the method by which federal and State funds and grants, including the Juvenile Accountability Incentive Block Grants, are distributed to the local level to determine whether those functions should be consolidated under the plan of reorganization, whether priority should be given to funding certain programs in an effort to develop those programs statewide, and whether matching funds should be required from local governments as a prerequisite to obtaining State funds.

The plan of reorganization shall include the following:

- (1) The organizational structure of the new department if the creation of a new department is recommended, or, if consolidation of the Divisions within an existing department is recommended, the organizational structure of the division or divisions and a summary of any central administrative office support given to the division or

divisions. The plan shall include a statement of the total personnel positions for management, administration, and programs and the reporting relationships of those positions.

- (2) The proposed budget for fiscal year 2000-2001 for the new department, or the existing department and consolidated division or divisions within that department, including any proposed new positions, position reclassifications, or changes to salary structure of personnel.
- (3) Any proposal to consolidate any existing agency division, council, or program, other than the Division of Youth Services or the Juvenile Services Division, that provides services to and treatment of juveniles within the new department or new division or divisions.
- (4) A written statement of all options of reorganization considered by the Governor, a summary of why those options were not adopted, and an explanation of how the recommended organization and management structure will result in the most effective and efficient delivery of juvenile services and programs.
- (5) Any legislative proposals required to provide services to and treatment of juveniles more efficiently and effectively and any proposals to consolidate or expand office space, including the location and expected cost of the proposal.

All departments, divisions, councils, and programs from which the Governor may require information or assistance in developing the plan of reorganization shall cooperate with the Governor.

On or before April 1, 2000, the Governor shall report the plan of reorganization and funding requirements that are required to implement the plan of reorganization to the General Assembly. The plan of reorganization developed pursuant to this section shall not become effective until it is approved by the General Assembly.

Section 4. (a) G.S. 7A-343.1 reads as rewritten:

"§ 7A-343.1. Distribution of copies of the appellate division reports.

The Administrative Officer of the Courts shall, at the State's expense distribute such number of copies of the appellate division reports to federal, State departments and agencies, and to educational institutions of instruction, as follows:

Governor, Office of the	1
Lieutenant Governor, Office of the	1
Secretary of State, Department of the	2
State Auditor, Department of the	1
Treasurer, Department of the State	1
Superintendent of Public Instruction	1
Office of the Attorney General	11
State Bureau of Investigation	1
Agriculture and Consumer Services, Department of	1
Labor, Department of	1
Insurance, Department of	1
Budget Bureau, Department of Administration	1

Property Control, Department of Administration	1
State Planning, Department of Administration	1
Environment and Natural Resources, Department of	1
Revenue, Department of	1
Health and Human Services, Department of	1
Juvenile Justice, Office of	1
Commission for the Blind	1
Transportation, Department of	1
Motor Vehicles, Division of	1
Utilities Commission	8
Industrial Commission	11
State Personnel Commission	1
Office of State Personnel	1
Office of Administrative Hearings	2
Community Colleges, Department of	38
Employment Security Commission	1
Commission of Correction	1
Parole Commission	1
Archives and History, Division of	1
Crime Control and Public Safety, Department of	2
Cultural Resources, Department of	3
Legislative Building Library	2
Justices of the Supreme Court	1 ea.
Judges of the Court of Appeals	1 ea.
Judges of the Superior Court	1 ea.
Clerks of the Superior Court	1 ea.
District Attorneys	1 ea.
Emergency and Special Judges of the Superior Court	1 ea.
Supreme Court Library	AS MANY AS REQUESTED
Appellate Division Reporter	1
University of North Carolina, Chapel Hill	71
University of North Carolina, Charlotte	1
University of North Carolina, Greensboro	1
University of North Carolina, Asheville	1
North Carolina State University, Raleigh	1
Appalachian State University	1
East Carolina University	1
Fayetteville State University	1
North Carolina Central University	17
Western Carolina University	1
Duke University	17
Davidson College	2
Wake Forest University	25
Lenoir Rhyne College	1
Elon College	1
Campbell University	25
Federal, Out-of-State and Foreign Secretary of State	1
Secretary of Defense	1
Secretary of Health, Education and Welfare	1

Secretary of Housing and Urban Development	1
Secretary of Transportation	1
Attorney General	1
Department of Justice	1
Internal Revenue Service	1
Veterans' Administration	1
Library of Congress	5
Federal Judges resident in North Carolina	1 ea.
Marshal of the United States Supreme Court	1
Federal District Attorneys resident in North Carolina	1 ea.
Federal Clerks of Court resident in North Carolina	1 ea.
Supreme Court Library exchange list	1

Each justice of the Supreme Court and judge of the Court of Appeals shall receive for ~~his~~ private use, one complete and up-to-date set of the appellate division reports. The copies of reports furnished each justice or judge as set out in the table above may be retained ~~by him~~ personally to enable ~~him~~ the justice or judge to keep up-to-date ~~his~~ the personal set of reports."

(b) G.S. 14-316.1 reads as rewritten:

"§ 14-316.1. *Contributing to delinquency and neglect by parents and others.*

Any person who is at least 16 years old who knowingly or willfully causes, encourages, or aids any juvenile within the jurisdiction of the court to be in a place or condition, or to commit an act whereby the juvenile could be adjudicated delinquent, undisciplined, abused, or neglected as defined by ~~G.S. 7A-517~~ G.S. 7B-101 and G.S. 7B-1501 shall be guilty of a Class 1 misdemeanor.

It is not necessary for the district court exercising juvenile jurisdiction to make an adjudication that any juvenile is delinquent, undisciplined, abused, or neglected in order to prosecute a parent or any person, including an employee of the ~~Department of Health and Human Services~~ Office of Juvenile Justice under this section. An adjudication that a juvenile is delinquent, undisciplined, abused, or neglected shall not preclude a subsequent prosecution of a parent or any other person including an employee of the ~~Division of Youth Services~~ Office of Juvenile Justice, who contributes to the delinquent, undisciplined, abused, or neglected condition of any juvenile."

(c) G.S. 17C-3 reads as rewritten:

"§ 17C-3. *North Carolina Criminal Justice Education and Training Standards Commission established; members; terms; vacancies.*

(a) There is established the North Carolina Criminal Justice Education and Training Standards Commission, hereinafter called 'the Commission,' in the Department of Justice. The Commission shall be composed of 26 members as follows:

- (1) Police Chiefs. -- Three police chiefs selected by the North Carolina Association of Chiefs of Police and one police chief appointed by the Governor.
- (2) Police Officers. -- Three police officials appointed by the North Carolina Police Executives Association and two criminal justice

officers certified by the Commission as selected by the North Carolina Law-Enforcement Officers' Association.

- (3) Departments. -- The Attorney General of the State of North Carolina; the Secretary of the Department of Crime Control and Public Safety; ~~the Secretary of the Department of Health and Human Services;~~ the Secretary of the Department of Correction; the President of the Department of Community Colleges.

(3a) A representative of the Office of Juvenile Justice.

- (4) At-large Groups. -- One individual representing and appointed by each of the following organizations: one mayor selected by the League of Municipalities; one law-enforcement training officer selected by the North Carolina Law-Enforcement Training Officers' Association; one criminal justice professional selected by the North Carolina Criminal Justice Association; one sworn law-enforcement officer selected by the North State Law-Enforcement Officers' Association; one member selected by the North Carolina Law-Enforcement Women's Association; and one District Attorney selected by the North Carolina Association of District Attorneys.

- (5) Citizens and Others. -- The President of The University of North Carolina; the Director of the Institute of Government; and two citizens, one of whom shall be selected by the Governor and one of whom shall be selected by the Attorney General. The General Assembly shall appoint two persons, one upon the recommendation of the Speaker of the House of Representatives and one upon the recommendation of the President Pro Tempore of the Senate. Appointments by the General Assembly shall be made in accordance with G.S. 120-122. Appointments by the General Assembly shall serve two-year terms to conclude on June 30th in odd-numbered years.

(b) The members shall be appointed for staggered terms. The initial appointments shall be made prior to September 1, 1983, and the appointees shall hold office until July 1 of the year in which their respective terms expire and until their successors are appointed and qualified as provided hereafter:

For the terms of one year: one member from subdivision (1) of subsection (a), serving as a police chief; three members from subdivision (2) of subsection (a), one serving as a police official, and two criminal justice officers; one member from subdivision (4) of subsection (a), appointed by the North Carolina Law-Enforcement Training Officers' Association; and two members from subdivision (5) of subsection (a), one appointed by the Governor and one appointed by the Attorney General.

For the terms of two years: one member from subdivision (1) of subsection (a), serving as a police chief; one member from subdivision (2) of subsection (a), serving as a police official; and two members from subdivision (4) of subsection (a), one appointed by the League of Municipalities and one appointed by the North Carolina Association of District Attorneys.

For the terms of three years: two members from subdivision (1) of subsection (a), one police chief appointed by the North Carolina Association of Chiefs of Police and one police chief appointed by the Governor; one member from subdivision (2) of subsection (a), serving as a police official; and three members from subdivision (4) of subsection (a), one appointed by the North Carolina Law-Enforcement Women's Association, one appointed by the North Carolina Criminal Justice Association, and one appointed by the North State Law-Enforcement Officers' Association.

Thereafter, as the term of each member expires, his successor shall be appointed for a term of three years. Notwithstanding the appointments for a term of years, each member shall serve at the will of the appointing authority.

The Attorney General, the Secretary of the Department of Crime Control and Public Safety, ~~the Secretary of the Department of Health and Human Services,~~ the Secretary of the Department of Correction, the President of The University of North Carolina, the Director of the Institute of Government, and the President of the Department of Community Colleges shall be continuing members of the Commission during their tenure. These members of the Commission shall serve ex officio and shall perform their duties on the Commission in addition to the other duties of their offices. The ex officio members may elect to serve personally at any or all meetings of the Commission or may designate, in writing, one member of their respective office, department, university or agency to represent and vote for them on the Commission at all meetings the ex officio members are unable to attend.

Vacancies in the Commission occurring for any reason shall be filled, for the unexpired term, by the authority making the original appointment of the person causing the vacancy. A vacancy may be created by removal of a Commission member by majority vote of the Commission for misconduct, incompetence, or neglect of duty. A Commission member may be removed only pursuant to a hearing, after notice, at which the member subject to removal has an opportunity to be heard."

(d) G.S. 66-58(b) reads as rewritten:

"(b) The provisions of subsection (a) of this section shall not apply to:

- (1) Counties and municipalities.
- (2) The Department of Health and Human Services or the Department of Agriculture and Consumer Services for the sale of serums, vaccines, and other like products.
- (3) The Department of Administration, except that the agency shall not exceed the authority granted in the act creating the agency.
- (4) The State hospitals for the mentally ill.
- (5) The Department of Health and Human Services.
- (6) The North Carolina School for the Blind at Raleigh.
- (6a) The Office of Juvenile Justice.
- (7) The North Carolina Schools for the Deaf.
- (8) The Greater University of North Carolina with regard to its utilities and other services now operated by it nor to the sale of articles produced incident to the operation of instructional departments, articles incident to educational research, articles of

merchandise incident to classroom work, meals, books, or to articles of merchandise not exceeding twenty-five cents (25¢) in value when sold to members of the educational staff or staff auxiliary to education or to duly enrolled students or occasionally to immediate members of the families of members of the educational staff or of duly enrolled students nor to the sale of meals or merchandise to persons attending meetings or conventions as invited guests nor to the operation by the University of North Carolina of an inn or hotel and dining and other facilities usually connected with a hotel or inn, nor to the hospital and Medical School of the University of North Carolina, nor to the Coliseum of North Carolina State University at Raleigh, and the other schools and colleges for higher education maintained or supported by the State, nor to the Centennial Campus of North Carolina State University at Raleigh, nor to the comprehensive student health services or the comprehensive student infirmaries maintained by the constituent institutions of the University of North Carolina.

- (9) The Department of Environment and Natural Resources, except that the Department shall not construct, maintain, operate or lease a hotel or tourist inn in any park over which it has jurisdiction. The North Carolina Wildlife Resources Commission may sell wildlife memorabilia as a service to members of the public interested in wildlife conservation.
- (10) Child-caring institutions or orphanages receiving State aid.
- (11) Highlands School in Macon County.
- (12) The North Carolina State Fair.
- (13) Rural electric memberships corporations.
- (13a) State Farm Operations Commission.
- (13b) The Department of Agriculture and Consumer Services with regard to its lessees at farmers' markets operated by the Department.
- (13c) The Western North Carolina Agricultural Center.
- (14) Nothing herein contained shall be construed to prohibit the engagement in any of the activities described in subsection (a) hereof by a firm, corporation or person who or which is a lessee of space only of the State of North Carolina or any of its departments or agencies; provided the leases shall be awarded by the Department of Administration to the highest bidder, as provided by law in the case of State contracts and which lease shall be for a term of not less than one year and not more than five years.
- (15) The State Department of Correction is authorized to purchase and install automobile license tag plant equipment for the purpose of manufacturing license tags for the State and local governments and for such other purposes as the Department may direct.

The Commissioner of Motor Vehicles, or such other authority as may exercise the authority to purchase automobile

license tags is hereby directed to purchase from, and to contract with, the State Department of Correction for the State automobile license tag requirements from year to year.

The price to be paid to the State Department of Correction for the tags shall be fixed and agreed upon by the Governor, the State Department of Correction, and the Motor Vehicle Commissioner, or such authority as may be authorized to purchase the supplies.

- (16) Laundry services performed by the Department of Correction may be provided only for agencies and instrumentalities of the State which are supported by State funds and for county or municipally controlled and supported hospitals presently being served by the Department of Correction, or for which services have been contracted or applied for in writing, as of May 22, 1973. In addition to the prior sentence, laundry services performed by the Department of Correction may be provided for the Governor Morehead School and the North Carolina School for the Deaf.

The services shall be limited to wet-washing, drying and ironing of flatwear or flat goods such as towels, sheets and bedding, linens and those uniforms prescribed for wear by the institutions and further limited to only flat goods or apparel owned, distributed or controlled entirely by the institutions and shall not include processing by any dry-cleaning methods; provided, however, those garments and items presently being serviced by wet-washing, drying and ironing may in the future, at the election of the Department of Correction, be processed by a dry-cleaning method.

- (17) The North Carolina Global TransPark Authority or a lessee of the Authority.
- (18) The activities and products of private enterprise carried on or manufactured within a State prison facility pursuant to G.S. 148-70."

(e) G.S. 66-58(c) reads as rewritten:

"(c) The provisions of subsection (a) shall not prohibit:

- (1) The sale of products of experiment stations or test farms.
- (2) The sale of learned journals, works of art, books or publications of the Department of Cultural Resources or other agencies, or the Supreme Court Reports or Session Laws of the General Assembly.
- (3) The business operation of endowment funds established for the purpose of producing income for educational purposes; for purposes of this section, the phrase 'operation of endowment funds' shall include the operation by public postsecondary educational institutions of campus stores, the profits from which are used exclusively for awarding scholarships to defray the expenses of students attending the institution; provided, that the operation of the stores must be approved by the board of trustees of the institution, and the merchandise sold shall be limited to

educational materials and supplies, gift items and miscellaneous personal-use articles. Provided further that sales at campus stores are limited to employees of the institution and members of their immediate families, to duly enrolled students of the campus at which a campus store is located and their immediate families, to duly enrolled students of other campuses of the University of North Carolina other than the campus at which the campus store is located, to other campus stores and to other persons who are on campus other than for the purpose of purchasing merchandise from campus stores. It is the intent of this subdivision that campus stores be established and operated for the purpose of assuring the availability of merchandise described in this Article for sale to persons enumerated herein and not for the purpose of competing with stores operated in the communities surrounding the campuses of the University of North Carolina.

- (4) The operation of lunch counters by the Department of Health and Human Services as blind enterprises of the type operated on January 1, 1951, in State buildings in the City of Raleigh.
- (5) The operation of a snack bar and cafeteria in the State Legislative Building.
- (6) The maintenance by the prison system authorities of eating and sleeping facilities at units of the State prison system for prisoners and for members of the prison staff while on duty, or the maintenance by the highway system authorities of eating and sleeping facilities for working crews on highway construction or maintenance when actually engaged in such work on parts of the highway system.
- (7) The operation by penal, correctional or facilities operated by the Department of Health and Human ~~Services~~ Services, the Office of Juvenile Justice, or by the Department of Agriculture and Consumer Services, of dining rooms for the inmates or clients or members of the staff while on duty and for the accommodation of persons visiting the inmates or clients, and other bona fide visitors.
- (8) The sale by the Department of Agriculture and Consumer Services of livestock, poultry and publications in keeping with its present livestock and farm program.
- (9) The operation by the public schools of school cafeterias.
- (9a) The use of a public school bus or public school activity bus for a purpose allowed under G.S. 115C-242 or the use of a public school activity bus for a purpose authorized by G.S. 115C-247.
- (10) Sale by any State correctional or other institution of farm, dairy, livestock or poultry products raised or produced by it in its normal operations as authorized by the act creating it.
- (11) The sale of textbooks, library books, forms, bulletins, and instructional supplies by the State Board of Education, State Department of Public Instruction, and local school authorities.

- (12) The sale of North Carolina flags by or through the auspices of the Department of Administration, to the citizens of North Carolina.
- (13) The operation by the Department of Correction of forestry management programs on State-owned lands, including the sale on the open market of timber cut as a part of the management program.
- (14) The operation by the Department of Correction of facilities to manufacture and produce traffic and street name signs for use on the public streets and highways of the State.
- (15) The operation by the Department of Correction of facilities to manufacture and produce paint for use on the public streets and highways of the State.
- (16) The performance by the Department of Transportation of dredging services for a unit of local government.
- (17) The sale by the State Board of Elections to political committees and candidate committees of computer software designed by or for the State Board of Elections to provide a uniform system of electronic filing of the campaign finance reports required by Article 22A of Chapter 163 of the General Statutes and to facilitate the State Board's monitoring of compliance with that Article. This computer software for electronic filing of campaign finance reports shall not exceed a cost of one hundred dollars (\$100.00) to any political committee or candidate committee without the State Board of Elections first notifying in writing the Joint Legislative Commission on Governmental Operations.
- (18) The leasing of no more than 50 acres within the North Carolina Zoological Park by the Department of Environment and Natural Resources to the North Carolina Zoological Society for the maintenance or operation, pursuant to a contract or otherwise, of an exhibition center, theater, conference center, and associated restaurants and lodging facilities."

(f) G.S. 114-19.6 reads as rewritten:

"§ 114-19.6. *Criminal history record checks of employees of and applicants for employment with the Department of Health and Human ~~Services~~ Services, and the Office of Juvenile Justice.*

(a) Definitions. -- As used in this section, the term:

- (1) 'Covered person' means:
 - a. An applicant for employment or a current employee in a position in the Department of Health and Human Services or the Office of Juvenile Justice who provides direct care for a client, patient, student, resident or ward of the Department; or
 - b. Supervises positions providing direct care as outlined in sub-subdivision a. of this subdivision.
- (2) 'Criminal history' means a State or federal history of conviction of a crime, whether a misdemeanor or felony, that bears upon a covered person's fitness for employment in the Department of Health and Human ~~Services~~ Services or the Office of Juvenile Justice. The crimes include, but are not limited to, criminal

offenses as set forth in any of the following Articles of Chapter 14 of the General Statutes: Article 5, Counterfeiting and Issuing Monetary Substitutes; Article 5A, Endangering Executive and Legislative Officers; Article 6, Homicide; Article 7A, Rape and Other Sex Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 14, Burglary and Other Housebreakings; Article 15, Arson and Other Burnings; Article 16, Larceny; Article 17, Robbery; Article 18, Embezzlement; Article 19, False Pretenses and Cheats; Article 19A, Obtaining Property or Services by False or Fraudulent Use of Credit Device or Other Means; Article 19B, Financial Transaction Card Crime Act; Article 20, Frauds; Article 21, Forgery; Article 26, Offenses Against Public Morality and Decency; Article 26A, Adult Establishments; Article 27, Prostitution; Article 28, Perjury; Article 29, Bribery; Article 31, Misconduct in Public Office; Article 35, Offenses Against the Public Peace; Article 36A, Riots and Civil Disorders; Article 39, Protection of Minors; Article 40, Protection of the Family; Article 59, Public Intoxication; and Article 60, Computer-Related Crime. The crimes also include possession or sale of drugs in violation of the North Carolina Controlled Substances Act, Article 5 of Chapter 90 of the General Statutes, and alcohol-related offenses such as sale to underage persons in violation of G.S. 18B-302, or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5.

(b) When requested by the Department of Health and Human Services, ~~Services or the Office of Juvenile Justice~~, the North Carolina Department of Justice may provide to the Department of ~~Health and Human Services or Office~~ a covered person's criminal history from the State Repository of Criminal Histories. Such requests shall not be due to a person's age, sex, race, color, national origin, religion, creed, political affiliation, or handicapping condition as defined by G.S. 168A-3. For requests for a State criminal history record check only, the Department of ~~Health and Human Services or Office~~ shall provide to the Department of Justice a form consenting to the check signed by the covered person to be checked and any additional information required by the Department of Justice. National criminal record checks are authorized for covered applicants who have not resided in the State of North Carolina during the past five years. For national checks the Department of ~~Health and Human Services or Office~~ shall provide to the North Carolina Department of Justice the fingerprints of the covered person to be checked, any additional information required by the Department of Justice, and a form signed by the covered person to be checked consenting to the check of the criminal record and to the use of fingerprints and other identifying information required by the State or National Repositories. The fingerprints of the individual shall be forwarded to the State Bureau of Investigation for a search of the State criminal history record file and the State Bureau of Investigation shall forward a set of fingerprints to the Federal Bureau of Investigation for a national criminal

history record check. The Department of Health and Human Services and the Office of Juvenile Justice shall keep all information pursuant to this section confidential. The Department of Justice shall charge a reasonable fee for conducting the checks of the criminal history records authorized by this section.

(c) All releases of criminal history information to the Department of Health and Human Services or the Office of Juvenile Justice shall be subject to, and in compliance with, rules governing the dissemination of criminal history record checks as adopted by the North Carolina Division of Criminal Information. All of the information the Department ~~of Health and Human Services~~ or Office receives through the checking of the criminal history is privileged information and for the exclusive use of the ~~Department of Health and Human Services~~ Department or Office.

(d) If the covered person's verified criminal history record check reveals one or more convictions covered under subsection (a) of this section, then the conviction shall constitute just cause for not selecting the person for employment, or for dismissing the person from current employment with the Department of Health and Human ~~Services~~ Services or the Office of Juvenile Justice. The conviction shall not automatically prohibit employment; however, the following factors shall be considered by the Department ~~of Health and Human Services~~ or Office in determining whether employment shall be denied:

- (1) The level and seriousness of the crime;
- (2) The date of the crime;
- (3) The age of the person at the time of the conviction;
- (4) The circumstances surrounding the commission of the crime, if known;
- (5) The nexus between the criminal conduct of the person and job duties of the person;
- (6) The prison, jail, probation, parole, rehabilitation, and employment records of the person since the date the crime was committed; and
- (7) The subsequent commission by the person of a crime listed in subsection (a) of this section.

(e) The Department of Health and Human Services and the Office of Juvenile Justice may deny employment to or dismiss a covered person who refuses to consent to a criminal history record check or use of fingerprints or other identifying information required by the State or National Repositories of Criminal Histories. Any such refusal shall constitute just cause for the employment denial or the dismissal from employment.

(f) The Department of Health and Human Services and the Office of Juvenile Justice may extend a conditional offer of employment pending the results of a criminal history record check authorized by this section."

(g) G.S. 115C-110 reads as rewritten:

"§ 115C-110. *Services mandatory; single-agency responsibility; State and local plans; census and registration.*

(a) The Board shall cause to be provided by all local school administrative units and by all other State and local governmental agencies providing special education services or having children with special needs in their care, custody, management, jurisdiction, control, or programs, special

education and related services appropriate to all children with special needs. In this regard, all local school administrative units and all other State and local governmental agencies providing special education and related services shall explore available local resources and determine whether the services are currently being offered by an existing public or private agency.

When a specified special education or related service is being offered by a local public or private resource, any unit or agency described above shall negotiate for the purchase of that service or shall present full consideration of alternatives and its recommendations to the Board. In this regard, a new or additional program for special education or related services shall be developed with the approval of the Board only when that service is not being provided by existing public or private resources or the service cannot be purchased from existing providers. Further, the Board shall support and encourage joint and collaborative special education planning and programming at local levels to include local administrative units and the programs and agencies of the Departments of Health and Human Services and ~~Correction~~, Correction and the Office of Juvenile Justice.

The jurisdiction of the Board with respect to the design and content of special education programs or related services for children with special needs extends to and over the Department of Health and Human ~~Services~~ Services, the Office of Juvenile Justice, and the Department of Correction.

All provisions of this Article that are specifically applicable to local school administrative units also are applicable to the Department of Health and Human ~~Services~~ Services, the Office of Juvenile Justice, and the Department of Correction and their divisions and agencies; all duties, responsibilities, rights and privileges specifically imposed on or granted to local school administrative units by this Article also are imposed on or granted to the Department of Health and Human ~~Services~~ Services, the Office of Juvenile Justice, and the Department of Correction and their divisions and agencies. However, with respect to children with special needs who are residents or patients of any state-operated or state-supported residential treatment facility, including without limitation, a school for the deaf, school for the blind, mental hospital or center, mental retardation center, or in a facility operated by the Office of Juvenile Justice, the Department of Correction or any of its divisions and agencies, the Board shall have the power to contract with the Department of Health and Human ~~Services~~ Services, the Office of Juvenile Justice, and the Department of Correction for the provision of special education and related services and the power to review, revise and approve ~~said Departments'~~ any plans for special education and related services to those residents.

The Departments of Health and Human Services and ~~Correction and the~~ Office of Juvenile Justice shall submit to the Board their plans for the education of children with special needs in their care, custody, or control. The Board shall have general supervision and shall set standards, by rule or regulation, for the programs of special education to be administered by it, by local educational agencies, and by the Departments of Health and Human Services and ~~Correction~~, Correction and the Office of Juvenile Justice. The Board may grant specific exemptions for programs administered by the Department of Health and Human ~~Services~~ Services, the Office of Juvenile

Justice, or the Department of Correction when compliance by them with the Board's standards would, in the Board's judgment, impose undue hardship on ~~such~~ this Department or Office and when other procedural due process requirements, substantially equivalent to those of G.S. 115C-116, are assured in programs of special education and related services furnished to children with special needs served by ~~such Department~~, this Department or Office. Further, the Board shall recognize that inpatient and residential special education programs within the Departments of Health and Human Services and Correction and the Office of Juvenile Justice may require more program resources than those necessary for optimal operation of ~~such~~ these programs in local school administrative units.

Every State and local department, division, unit or agency covered by this section is hereinafter referred to as a 'local educational agency' unless the text of this Article otherwise provides.

(b) The Board shall make and keep current a plan for the implementation of the policy set forth in G.S. 115C-106(b). The plan shall include:

- (1) A census of the children with special needs in the State, as required by subsection (j) of this section;
- (2) A procedure for diagnosis and evaluation of each ~~such~~ child;
- (3) An inventory of the personnel and facilities available to provide special education for ~~such~~ these children;
- (4) An analysis of the present distribution of responsibility for special education between State and local educational agencies, together with recommendations for any necessary or desirable changes in the distribution of responsibilities;
- (5) Standards for the education of children with special needs;
- (6) Programs and procedures for the development and implementation of a comprehensive system of personnel development; and
- (7) Any additional matters, including recommendations for amendment of laws, changes in administrative regulations, rules and practices and patterns of special organization, and changes in levels and patterns of education financial support.

(c) The Board shall annually submit amendments to or revisions of the plan required by subsection (b) to the Governor and General Assembly and make it available for public comment pursuant to subdivision (1) and for public distribution no less than 30 days before January 15 of each year. All such submissions shall set forth in detail the progress made in the implementation of the plan.

(d) The Board shall adopt rules ~~or regulations~~ covering:

- (1) The qualifications of and standards for certification of teachers, teacher assistants, speech clinicians, school psychologists, and others involved in the education and training of children with special needs;
- (2) Minimum standards for the individualized educational program for all children with special needs other than for the pregnant children, and for the educational program for the pregnant children, who receive special education and related services; and
- (3) ~~Such~~ Any other rules ~~or regulations~~ as may be necessary or appropriate for carrying out the purposes of this Article.

Representatives from the Departments of Health and Human Services and Correction and the Office of Juvenile Justice shall be involved in the development of the standards outlined under this subsection.

(e) On or before October 15, each local educational agency shall report annually to the Board the extent to which it is then providing special education for children with special needs. The annual report also shall detail the means by which the local educational agency proposes to secure full compliance with the policy of this Article, including the following:

- (1) A statement of the extent to which the required education and services will be provided directly by the agency;
- (2) A statement of the extent to which standards in force pursuant to G.S. 115C-110(b)(5) and (d)(2) are being met by the agency; and
- (3) The means by which the agency will contract to provide, at levels meeting standards in force pursuant to G.S. 115C-110(b)(5) and (d)(2), all special education and related services not provided directly by it or by the State.

(f) After submitting the report required by subsection (e), the local educational agency also shall submit such supplemental and additional reports as the Board may require to keep the local educational agency's plan current.

(g) By ~~rule or regulation~~, rule, the Board shall prescribe due dates not later than October 15 of each year, and all other necessary or appropriate matters relating to ~~such~~ these annual and supplemental and additional reports.

(h) The annual report shall be a two-year plan for providing appropriate special education and related services to children with special needs. The agency shall submit the plan to the Board for its review, approval, modification, or disapproval. Unless thereafter modified with approval of the Board, the plan shall be adhered to by the local educational agency. The procedure for approving, disapproving, establishing, and enforcing the plan shall be the same as that set forth for the annual plan. The long-range plan shall include such provisions as may be appropriate for the following, without limitation:

- (1) Establishment of classes, other programs of instruction, curricula, facilities, equipment, and special services for children with special needs; and
- (2) Utilization and professional development of teachers and other personnel working with children with special needs.

(i) Each local educational agency shall provide free appropriate special education and related services in accordance with the provisions of this Article for all children with special needs who are residents of, or whose parents or guardians are residents of, the agency's district, beginning with children aged five. No matriculation or tuition fees or other fees or charges shall be required or asked of children with special needs or their parents or guardians except ~~such~~ those fees or charges as are required uniformly of all public school pupils. The provision of free appropriate special education within the facilities of the Department of Health and Human Services and

the Office of Juvenile Justice shall not prevent that Department and Office from charging for other services or treatment.

(j) The Board shall require an annual census of children with special needs, subdivided for 'identified' and 'suspected' children with special needs, to be taken in each school year. Suspected children are those in the formal process of being identified, evaluated or diagnosed as children with special needs. The census shall be conducted annually and shall be completed not later than October 15, and shall be submitted to the Governor and General Assembly and be made available to the public no later than January 15 annually.

In taking the census, the Board shall require the cooperation, participation, and assistance of all local educational agencies and all other State and local governmental departments and agencies providing or required to provide special education services to children with special needs, and those departments and agencies shall cooperate and participate with and assist the Board in conducting the census.

The census shall include the number of children identified and suspected with special needs, their age, the nature of their disability, their county or city of residence, their local school administrative unit residence, whether they are being provided special educational or related services and if so by what department or agency, whether they are not being provided special education or related services, the identity of each department or agency having children with special needs in its care, custody, management, jurisdiction, control, or programs, the number of children with special needs being served by each department or agency, and such other information or data as the Board shall require. The census shall be of children with special needs between the ages of three and 21, inclusive.

(k) The Department shall monitor the effectiveness of individualized education programs in meeting the educational needs of all children with special needs other than pregnant children, and of educational programs in meeting the educational needs of the pregnant children.

(l) The Board shall provide for procedures assuring that in carrying out the requirements of this Article procedures are established for consultation with individuals involved in or concerned with the education of children with special needs, including parents or guardians of such children, and there are public hearings, adequate notice of such hearings, and an opportunity for comment available to the general public prior to the adoption of the policies, procedures, and rules or regulations required by this Article.

(m) Children with special needs shall be educated in the least restrictive appropriate setting, as defined by the State Board of Education."

(h) G.S. 115C-111 reads as rewritten:

"§ 115C-111. *Free appropriate education for all children with special needs.*

No child with special needs between the ages specified by G.S. 115C-109 shall be denied a free appropriate public education or be prevented from attending the public schools of the local educational agency in which he or his parents or legal guardian resides or from which he receives services or from attending any other public program of free appropriate public education because he is a child with special needs. If it appears that a child should receive a program of free appropriate public education in a program

operated by or under the supervision of the Department of Health and Human ~~Services~~, ~~Services~~ or the Office of Juvenile Justice, the local educational agency shall confer with the appropriate Department of Health and Human Services or Office of Juvenile Justice staff for their participation and determination of the appropriateness of placement in said program and development of the child's individualized education program. The individualized education program may then be challenged under the due process provisions of G.S. 115C-116. Every child with special needs shall be entitled to attend ~~such these~~ nonresidential schools or programs and receive from them free appropriate public education."

(i) G.S. 115C-113(f) reads as rewritten:

"(f) Each local educational agency shall prepare individualized educational programs for all children found to be children with special needs other than the pregnant children, and educational programs prescribed in subsection (h) of this section for the pregnant children. The individualized educational program shall be developed in conformity with Public Law 94-142 and the implementing regulations issued by the United States Department of Education and shall be implemented in conformity with timeliness set by that Department. The term 'individualized educational program' means a written statement for each such child developed in any meeting by a representative of the local educational agency who shall be qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of such children, the teacher, the parents or guardian of such child, and, whenever appropriate, such child, which statement shall be based on rules developed by the Board. Each local educational agency shall establish, or revise, whichever is appropriate, the individualized educational program of each child with special needs each school year and will then review and, if appropriate revise, its provisions periodically, but not less than annually. In the facilities and programs of the Department of Health and Human ~~Services~~, ~~Services~~ and the Office of Juvenile Justice, the individualized educational program shall be planned in collaboration with those other individuals responsible for the design of the total treatment or habilitation plan or both; the resulting educational, treatment, and habilitation plans shall be coordinated, integrated, and internally consistent."

(j) G.S. 115C-113.1 reads as rewritten:

"§ 115C-113.1. *Surrogate parents.*

In the case of a child whose parent or guardian is unknown, whose whereabouts cannot be determined after reasonable investigation, or who is a ward of the State, the local educational agency shall appoint a surrogate parent for the child. The surrogate parent shall be appointed from a group of persons approved by the Superintendent of Public ~~Instruction~~ and Instruction, the Secretary of Health and Human Services, and the Office of Juvenile Justice, but in no case shall the person appointed be an employee of the local educational agency or directly involved in the education or care of the child. The Superintendent shall ensure that local educational agencies appoint a surrogate parent for every child in need of a surrogate parent."

(k) G.S. 115C-115 reads as rewritten:

"§ 115C-115. *Placements in private schools, out-of-state schools and schools in other local educational agencies.*

The board shall adopt rules and regulations to assure that:

- (1) There be no cost to the parents or guardian for the placement of a child in a private school, out-of-state school or a school in another local education agency if the child was so placed by the Board or by the appropriate local educational agency as the means of carrying out the requirement of this Article or any other applicable law requiring the provision of special education and related services to children within the State.
- (2) No child shall be placed by the Board or by the local educational agency in a private or out-of-state school unless the Board has determined that the school meets standards that apply to State and local educational agencies and that the child so placed will have all the rights he would have if served by a State or local educational agency.
- (3) If the placement of the child in a private school, out-of-state school or a school in another local educational agency determined by the Superintendent of Public Instruction to be the most cost-effective way to provide an appropriate education to that child and the child is not currently being educated by the Department of Health and Human ~~Services~~ Services, the Office of Juvenile Justice, or the Department of Correction, the State will bear a portion of the cost of the placement of the child. The local school administrative unit shall pay an amount equal to what it receives per pupil from the State Public School Fund and from other State and federal funds for children with special needs for that child. The State shall pay the full cost of any remainder up to a maximum of fifty percent (50%) of the total cost."

(l) G.S. 115C-121(b) reads as rewritten:

"(b) The Council shall consist of ~~18~~ 23 members to be appointed as follows: five ex officio members; two members appointed by the Governor; two members of the Senate appointed by the President Pro Tempore; two members of the House of Representatives appointed by the Speaker of the House; and 12 members appointed by the State Board of Education. Of those members of the Council appointed by the State Board one member shall be selected from each congressional district within the State, and the members so selected shall be composed of at least one person representing each of the following: handicapped individuals, parents or guardians of children with special needs, teachers of children with special needs, and State and local education officials and administrators of programs for children with special needs. The Council shall designate a chairperson from among its members. The designation of the chairperson is subject to the approval of the State Board of Education. The board shall promulgate rules or regulations to carry out this subsection.

Ex officio members of the Council shall be the following:

- (1) The Secretary of the Department of Health and Human Services or the Secretary's designee;

- (1a) A representative of the Office of Juvenile Justice, appointed by the Governor;
- (2) The Secretary of the Department of Correction or the Secretary's designee;
- (3) A representative from The University of North Carolina Planning Consortium for Children with Special Needs; and
- (4) The Superintendent of Public Instruction or the Superintendent's designee.

The term of appointment for all members except those appointed by the State Board of Education shall be for two years. The term for members appointed by the State Board of Education shall be for four years. No person shall serve more than two consecutive four-year terms. The initial term of office of the person appointed from the 12th Congressional District shall commence on January 3, 1993, and expire on June 30, 1996.

Each Council member shall serve without pay, but shall receive travel allowances and per diem in the same amount provided for members of the North Carolina General Assembly."

(m) G.S. 115C-139(a) reads as rewritten:

"(a) The Board, any two or more local educational agencies and any such agency and any State department, agency, or division having responsibility for the education, treatment or habilitation of children with special needs are authorized to enter into interlocal cooperation undertakings pursuant to the provisions of Chapter 160A, Article 20, Part 1 of the General Statutes or into undertakings with a State agency such as the Office of Juvenile Justice or the Departments of Public Instruction, Health and Human Services, or Correction, or their divisions, agencies, or units, for the purpose of providing for the special education and related services, treatment or habilitation of such children within the jurisdiction of the agency or unit, and shall do so when it itself is unable to provide the appropriate public special education or related services for ~~such~~ these children. In entering into such undertakings, the local agency and State department, agency, or division shall also contract to provide the special education or related services that are most educationally appropriate to the children with special needs for whose benefit the undertaking is made, and provide such these services by or in the local agency unit or State department, agency, or division located in the place most convenient to ~~such these~~ children."

(n) G.S. 115C-250(a) reads as rewritten:

"(a) The State Board of Education and local boards of education may expend public funds for transportation of handicapped children with special needs who are unable because of their handicap to ride the regular school buses and who have been placed in programs by a local school board as a part of its duty to provide such children with a free appropriate education, including its duty under G.S. 115C-115. At the option of the local board of education with the concurrence of the State Board of Education, funds appropriated to the State Board of Education for contract transportation of exceptional children may be used to purchase buses and minibuses as well as for the purposes authorized in the budget. The State Board of Education

shall adopt rules and regulations concerning the construction and equipment of these buses and minibuses.

The Department of Health and Human ~~Services~~ Services, the Office of Juvenile Justice, and the Department of Correction may also expend public funds for transportation of handicapped children with special needs who are unable because of their handicap to ride the regular school buses and who have been placed in programs by one of these agencies as a part of that agency's duty to provide such children with a free appropriate public education.

If a local area mental health center places a child with special needs in an educational program, the local area mental health center shall pay for the transportation of the child, if handicapped and unable because of the handicap to ride the regular school buses, to the program."

(o) G.S. 115C-325(p) reads as rewritten:

"(p) Section Applicable to Certain Institutions. -- Notwithstanding any law or regulation to the contrary, this section shall apply to all persons employed in teaching and related educational classes in the schools and institutions of the Departments of Health and Human Services and Correction or the Office of Juvenile Justice regardless of the age of the students."

(p) G.S. 115D-1 reads as rewritten:

"§ 115D-1. *Statement of purpose.*

The purposes of this Chapter are to provide for the establishment, organization, and administration of a system of educational institutions throughout the State offering courses of instruction in one or more of the general areas of two-year college parallel, technical, vocational, and adult education programs, to serve as a legislative charter for such institutions, and to authorize the levying of local taxes and the issuing of local bonds for the support thereof. The major purpose of each and every institution operating under the provisions of this Chapter shall be and shall continue to be the offering of vocational and technical education and training, and of basic, high school level, academic education needed in order to profit from vocational and technical education, for students who are high school graduates or who are beyond the compulsory age limit of the public school system and who have left the public schools, provided, juveniles of any age committed to the ~~Division of Youth Services of the Department of Health and Human Services~~ Office of Juvenile Justice by a court of competent jurisdiction may, if approved by the director of the training school to which they are assigned, take courses offered by institutions of the system if they are otherwise qualified for admission."

(q) G.S. 115D-5(b) reads as rewritten:

"(b) In order to make instruction as accessible as possible to all citizens, the teaching of curricular courses and of noncurricular extension courses at convenient locations away from institution campuses as well as on campuses is authorized and shall be encouraged. A pro rata portion of the established regular tuition rate charged a full-time student shall be charged a part-time student taking any curriculum course. In lieu of any tuition charge, the State Board of Community Colleges shall establish a uniform registration fee, or a schedule of uniform registration fees, to be charged students

enrolling in extension courses for which instruction is financed primarily from State funds; provided, however, that the State Board of Community Colleges may provide by general and uniform regulations for waiver of tuition and registration fees for persons not enrolled in elementary or secondary schools taking courses leading to a high school diploma or equivalent certificate, for training courses for volunteer firemen, local fire department personnel, volunteer rescue and lifesaving department personnel, local rescue and lifesaving department personnel, Radio Emergency Associated Citizens Team (REACT) members when the REACT team is under contract to a county as an emergency response agency, local law-enforcement officers, patients in State alcoholic rehabilitation centers, all full-time custodial employees of the Department of Correction, employees of the Department's Division of Adult Probation and Parole and employees of the ~~Division of Youth Services of the Department of Health and Human Services~~ Office of Juvenile Justice required to be certified pursuant to Chapter 17C of the General Statutes and the rules of the Criminal Justice and Training Standards Commission, trainees enrolled in courses conducted under the New and Expanding Industry Program, clients of sheltered workshops, clients of adult developmental activity programs, students in Health and Human Services Development Programs, juveniles of any age committed to the ~~Division of Youth Services of the Department of Health and Human Services~~ Office of Juvenile Justice by a court of competent jurisdiction, prison inmates, and members of the North Carolina State Defense Militia as defined in G.S. 127A-5 and as administered pursuant to Article 5 of Chapter 127A of the General Statutes. Provided further, tuition shall be waived for senior citizens attending institutions operating pursuant to this Chapter as set forth in Chapter 115B of the General Statutes, Tuition Waiver for Senior Citizens. Provided further, tuition shall also be waived for all courses taken by high school students at community colleges in accordance with G.S. 115D-20(4) and this section."

(r) G.S. 122C-3(13a) reads as rewritten:

"(13a) 'Eligible assaultive and violent children' means children who are citizens of North Carolina and:

- a. Who suffer from emotional, mental, or neurological handicaps that have been accompanied by behavior that is characterized as violent or assaultive; and
- b. Who are involuntarily institutionalized or otherwise placed in residential programs, including:
 1. Minors who are mentally ill as defined by G.S. 122C-3(21) and who are admitted for evaluation or treatment to a treatment facility under Article 5 of Chapter 122C of the General Statutes or are presented for admission and denied due to their behaviors or handicapping conditions;
 2. Minors who are referred to an area mental health, developmental disabilities, and substance abuse authority pursuant to ~~G.S. 7A-647(3)~~ G.S. 7B-903 for whom residential treatment or placement is recommended;

3.Minors who are placed in residential programs as a condition of probation pursuant to G.S. 7A-649(8); G.S. 7B-2506;

4.Minors who are ordered to a professional residential treatment program pursuant to G.S. 7A-649(6); G.S. 7B-2506; and

5.Minors committed to the custody of the ~~Division of Youth Services~~ Office of Juvenile Justice, pursuant to G.S. 7A-649(10); G.S. 7B-2506; and

- c. For whom the State has not provided appropriate treatment and educational programs."

(s) G.S. 122C-113(b1) reads as rewritten:

"(b1) The Secretary shall cooperate with the State Board of Education and the Office of Juvenile Justice in coordinating the responsibilities of the Department of Health and Human Services, the State Board of Education, the Office of Juvenile Justice, and the Department of Public Instruction for adolescent substance abuse programs. The Department of Health and Human Services, through its Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, in cooperation with the Office of Juvenile Justice, shall be responsible for intervention and treatment in non-school based programs. The State Board of Education and the Department of Public ~~Instruction~~ Instruction, in consultation with the Office of Juvenile Justice, shall have primary responsibility for in-school education, identification, and intervention services, including student assistance programs."

(t) G.S. 122C-117(a) reads as rewritten:

"(a) The area authority shall:

- (1) Engage in comprehensive planning, budgeting, implementing, and monitoring of community-based mental health, developmental disabilities, and substance abuse services;
- (2) Provide services to clients in the catchment ~~area;~~ area, including clients committed to the custody of the Office of Juvenile Justice;
- (3) Determine the needs of the area authority's clients and coordinate with the Secretary and with the Office of Juvenile Justice the provision of services to clients through area and State facilities;
- (4) Develop plans and budgets for the area authority subject to the approval of the Secretary;
- (5) Assure that the services provided by the area authority meet the rules of the Commission and Secretary;
- (6) Comply with federal requirements as a condition of receipt of federal grants; and
- (7) Appoint an area director, chosen through a search committee on which the Secretary of the Department of Health and Human Services or the Secretary's designee serves as a nonvoting member."

(u) G.S. 143-138(g) reads as rewritten:

"(g) Publication and Distribution of Code. -- The Building Code Council shall cause to be printed, after adoption by the Council, the North Carolina State Building Code and each amendment thereto. It shall, at the State's

expense, distribute copies of the Code and each amendment to State and local governmental officials, departments, agencies, and educational institutions, as is set out in the table below. (Those marked by an asterisk will receive copies only on written request to the Council.)

OFFICIAL OR AGENCY

NUMBER OF COPIES

State Departments and Officials

Governor.....	1
Lieutenant Governor	1
Auditor	1
Treasurer	1
Secretary of State	1
Superintendent of Public Instruction	1
Attorney General (Library)	1
Commissioner of Agriculture	1
Commissioner of Labor	1
Commissioner of Insurance.....	1
Department of Environment and Natural Resources.....	1
Department of Health and Human Services	1
Office of Juvenile Justice.....	1
Board of Transportation	1
Utilities Commission	1
Department of Administration	1
Clerk of the Supreme Court	1
Clerk of the Court of Appeals	1
Clerk of the Superior Court.....	1 each
Department of Cultural Resources [State Library].....	5
Supreme Court Library.....	2
Legislative Library	1

Schools

All state-supported colleges and universities in the State of North Carolina	*1 each
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Local Officials

Clerks of the Superior Courts	1 each
Chief Building Inspector of each incorporated municipality or county.....	1

In addition, the Building Code Council shall make additional copies available at such price as it shall deem reasonable to members of the general public."

(v) G.S. 143B-138.1(a) reads as rewritten:

"(a) All functions, powers, duties, and obligations previously vested in the following commissions, boards, councils, committees, or subunits of the Department of Human Resources are transferred to and vested in the Department of Health and Human Services by a Type I transfer, as defined in G.S. 143A-6:

- (1) Division of Aging.
- (2) Division of Services for the Blind.

- (3) Division of Medical Assistance.
- (4) Division of Mental Health, Developmental Disabilities, and Substance Abuse Services.
- (5) Division of Social Services.
- (6) Division of Facility Services.
- (7) Division of Vocational Rehabilitation.
- ~~(8) Division of Youth Services.~~
- (9) Division of Services for the Deaf and the Blind.
- (10) Office of Economic Opportunity.
- (11) Division of Child Development.
- (12) Office of Rural Health."
- (w) G.S. 143B-150.7(b) reads as rewritten:

"(b) The Committee shall have 24 members appointed for staggered four-year terms and until their successors are appointed and qualify. The Governor shall have the power to remove any member of the Committee from office in accordance with the provisions of G.S. 143B-13. Members may succeed themselves for one term and may be appointed again after being off the Committee for one term. Six of the members shall be legislators appointed by the General Assembly, three of whom shall be recommended by the Speaker of the House of Representatives, and three of whom shall be recommended by the President Pro Tempore of the Senate. Two of the members shall be appointed by the General Assembly from the public at large, one of whom shall be recommended by the Speaker of the House of Representatives, and one of whom shall be recommended by the President Pro Tempore of the Senate. The remainder of the members shall be appointed by the Governor as follows:

- (1) ~~Five~~ Four members representing the Department of Health and Human Services, one of whom shall be the Assistant Secretary for Children and Family, one of whom shall represent the Division of Social Services, ~~one of whom shall represent the Division of Youth Services,~~ one of whom shall represent the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, and one of whom shall represent the Division of Maternal and Child Health;
- (1a) One member representing the Office of Juvenile Justice;
- (2) Two members, one from each of the following: the Administrative Office of the Courts and the Department of Public Instruction;
- (3) One member who represents the Juvenile Justice Planning Committee of the Governor's Crime Commission, and one member appointed at large;
- (4) One member who is a district court judge certified by the Administrative Office of the Courts to hear juvenile cases;
- (5) One member representing the schools of social work of The University of North Carolina;
- (6) Two members, one of whom is a provider of family preservation services, and one of whom is a consumer of family preservation services; and

- (7) Three members who represent county-level associations; one of whom represents the Association of County Commissioners, one of whom represents the Association of Directors of Social Services, and one of whom represents the North Carolina Council of Mental Health, Developmental Disabilities, and Substance Abuse Services.

The Secretary of the Department of Health and Human Services shall serve as the Chair of the Committee. The Secretary shall appoint the cochair of the Committee for a two-year term on a rotating basis from among the Committee members who represent the ~~Division of Youth Services~~, Office of Juvenile Justice, the Division of Social Services, and the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services."

- (x) G.S. 143B-152.6 reads as rewritten:

"§ 143B-152.6. *Cooperation of State and local agencies.*

All agencies of the State and local government, including the Office of Juvenile Justice, departments of social services, health departments, local mental health, mental retardation, and substance abuse authorities, court personnel, law enforcement agencies, The University of North Carolina, the community college system, and cities and counties, shall cooperate with the Department of Health and Human Services, and local nonprofit corporations that receive grants in coordinating the program at the State level and in implementing the program at the local level. The Secretary of Health and Human Services, after consultation with the Superintendent of Public Instruction, shall develop a plan for ensuring the cooperation of State agencies and local agencies, and encouraging the cooperation of private entities, especially those receiving State funds, in the coordination and implementation of the program."

- (y) G.S. 143B-152.14 reads as rewritten:

"§ 143B-152.14. *Cooperation of State and local agencies.*

All agencies of the State and local government, including the Office of Juvenile Justice, departments of social services, health departments, local mental health, mental retardation, and substance abuse authorities, court personnel, law enforcement agencies, The University of North Carolina, the community college system, and cities and counties, shall cooperate with the Department of Health and Human Services, and local nonprofit corporations that receive grants in coordinating the program at the State level and in implementing the program at the local level. The Secretary of Health and Human Services, after consultation with the Superintendent of Public Instruction, shall develop a plan for ensuring the cooperation of State agencies and local agencies and encouraging the cooperation of private entities, especially those receiving State funds, in the coordination and implementation of the program."

- (z) G.S. 143B-153(2) reads as rewritten:

"(2) The Social Services Commission shall have the power and duty to establish standards and adopt rules and regulations:

- a. For the programs of public assistance established by federal legislation and by Article 2 of Chapter 108A of the General Statutes of the State of North Carolina with the exception of the program of medical assistance established by G.S. 108A-25(b);

- b. To achieve maximum cooperation with other agencies of the State and with agencies of other states and of the federal government in rendering services to strengthen and maintain family life and to help recipients of public assistance obtain self-support and self-care;
- c. For the placement and supervision of dependent juveniles and of delinquent children juveniles who are placed in the custody of the Office of Juvenile Justice, and payment of necessary costs of foster home care for needy and homeless children as provided by G.S. 108A-48; and
- d. For the payment of State funds to private child-placing agencies as defined in G.S. 131D-10.2(4) and residential child care facilities as defined in G.S. 131D-10.2(13) for care and services provided to children who are in the custody or placement responsibility of a county department of social services."

(aa) G.S. 143B-478 reads as rewritten:

"§ 143B-478. *Governor's Crime Commission -- creation; composition; terms; meetings, etc.*

(a) There is hereby created the Governor's Crime Commission of the Department of Crime Control and Public Safety. The Commission shall consist of 35 voting members and ~~six~~ five nonvoting members. The composition of the Commission shall be as follows:

(1) The voting members shall be:

- a. The Governor, the Chief Justice of the Supreme Court of North Carolina (or his alternate), the Attorney General, the Director of the Administrative Office of the Courts, the Secretary of the Department of Health and Human Services, the Secretary of the Department of Correction, and the Superintendent of Public Instruction;
- b. A judge of superior court, a judge of district court specializing in juvenile matters, a chief district court judge, a clerk of superior court, and a district attorney;
- c. A defense attorney, three sheriffs (one of whom shall be from a 'high crime area'), three police executives (one of whom shall be from a 'high crime area'), six citizens (two with knowledge of juvenile delinquency and the public school system, two of whom shall be under the age of 21 at the time of their appointment, one representative of a 'private juvenile delinquency program,' and one in the discretion of the Governor), three county commissioners or county officials, and three mayors or municipal officials;
- d. Two members of the North Carolina House of Representatives and two members of the North Carolina Senate.

(2) The nonvoting members shall be the Director of the State Bureau of Investigation, the Secretary of the Department of Crime Control and Public Safety, ~~the Director of the Division of Youth Services of the Department of Health and Human Services, the Administrator for Juvenile Services of the Administrative Office of the Courts,~~ a representative of the Office of Juvenile Justice,

the Director of the Division of Prisons and the Director of the Division of Adult Probation and ~~Paroles~~, Parole.

(b) The membership of the Commission shall be selected as follows:

- (1) The following members shall serve by virtue of their office: the Governor, the Chief Justice of the Supreme Court, the Attorney General, the Director of the Administrative Office of the Courts, the Secretary of the Department of Health and Human Services, the Secretary of the Department of Correction, the Director of the State Bureau of Investigation, the Secretary of the Department of Crime Control and Public Safety, the Director of the Division of Prisons, the Director of the Division of Adult Probation and ~~Paroles~~, Parole, the Director of the Division of Youth Services, the Administrator for Juvenile Services of the Administrative Office of the Courts, and the Superintendent of Public Instruction. Should the Chief Justice of the Supreme Court choose not to serve, his alternate shall be selected by the Governor from a list submitted by the Chief Justice which list must contain no less than three nominees from the membership of the Supreme Court.
- (2) The following members shall be appointed by the Governor: the representative of the Office of Juvenile Justice, the district attorney, the defense attorney, the three sheriffs, the three police executives, the six citizens, the three county commissioners or county officials, the three mayors or municipal officials.
- (3) The following members shall be appointed by the Governor from a list submitted by the Chief Justice of the Supreme Court, which list shall contain no less than three nominees for each position and which list must be submitted within 30 days after the occurrence of any vacancy in the judicial membership: the judge of superior court, the clerk of superior court, the judge of district court specializing in juvenile matters, and the chief district court judge.
- (4) The two members of the House of Representatives provided by subdivision (a)(1)d. of this section shall be appointed by the Speaker of the House of Representatives and the two members of the Senate provided by subdivision (a)(1)d. of this section shall be appointed by the President Pro Tempore of the Senate. These members shall perform the advisory review of the State plan for the General Assembly as permitted by section 206 of the Crime Control Act of 1976 (Public Law 94-503).
- (5) The Governor may serve as chairman, designating a vice-chairman to serve at his pleasure, or he may designate a chairman and vice-chairman both of whom shall serve at his pleasure.

(c) The initial members of the Commission shall be those appointed pursuant to subsection (b) above, which appointments shall be made by March 1, 1977. The terms of the present members of the Governor's Commission on Law and Order shall expire on February 28, 1977. Effective March 1, 1977, the Governor shall appoint members, other than those

serving by virtue of their office, to serve staggered terms; seven shall be appointed for one-year terms, seven for two-year terms, and seven for three-year terms. At the end of their respective terms of office their successors shall be appointed for terms of three years and until their successors are appointed and qualified. The Commission members from the House and Senate shall serve two-year terms effective March 1, of each odd-numbered year; and they shall not be disqualified from Commission membership because of failure to seek or attain reelection to the General Assembly, but resignation or removal from office as a member of the General Assembly shall constitute resignation or removal from the Commission. Any other Commission member no longer serving in the office from which he qualified for appointment shall be disqualified from membership on the Commission. Any appointment to fill a vacancy on the Commission created by the resignation, dismissal, death, disability, or disqualification of a member shall be for the balance of the unexpired term.

(d) The Governor shall have the power to remove any member from the Commission for misfeasance, malfeasance or nonfeasance.

(e) The Commission shall meet quarterly and at other times at the call of the chairman or upon written request of at least eight of the members. A majority of the voting members shall constitute a quorum for the transaction of business."

(bb) G.S. 147-45 reads as rewritten:

"§ 147-45. *Distribution of copies of State publications.*

The Secretary of State shall, at the State's expense, as soon as possible after publication, provide such number of copies of the Session Laws and Senate and House Journals to federal, State, and local governmental officials, departments and agencies, and to educational institutions of instruction and exchange use, as is set out in the table below:

Agency or Institution	Session Laws	Assembly Journals
Governor, Office of the	3	2
Lieutenant Governor, Office of the	1	1
Secretary of State, Department of the	3	3
Auditor, Department of the State	3	1
Treasurer, Department of the State	3	1
Local Government Commission	2	0
State Board of Education	1	0
Department of Public Instruction	3	1
Controller	1	0
Technical Assistance Centers	1 ea.	0
Department of Community Colleges	3	1
Justice, Department of		
Office of the Attorney General	25	3
Budget Bureau (Administration)	1	0
Property Control (Administration)	1	1
State Bureau of Investigation	1	0

Agriculture and Consumer Services,		
Department of	3	1
Labor, Department of	5	1
Insurance, Department of	5	1
Administration, Department of	1	1
Budget Bureau	2	1
Controller	1	0
Property Control	1	0
Purchase and Contract	2	0
Policy and Development	1	0
Veterans Affairs Commission	1	0
Environment and Natural Resources,		
Department of	6	0
Wildlife Resources Commission	2	0
Revenue, Department of	5	1
Health and Human Services, Department of	6	0
Mental Health, Developmental Disabilities,		
and Substance Abuse Services,		
Division of	1	0
Social Services, Division of	3	0
Facilities Services, Division of	1	0
Youth Services, Division of	1	0
Hospitals and Institutions	1 ea.	0
<u>Juvenile Justice, Office of</u>	<u>3</u>	<u>0</u>
Transportation, Department of	1	0
Board of Transportation	3	0
Motor Vehicles, Division of	1	0
Commerce, Department of	1	0
Economic Development, Division of	2	0
State Ports Authority	1	0
Alcoholic Beverage Control Commission,		
North Carolina	2	0
Banking Commission	2	0
Utilities Commission	8	1
Industrial Commission	7	0
Labor Force Development Council	1	0
Milk Commission	5	0
Employment Security Commission	1	1
Correction, Department of	1	0
Department of Correction	2	0
Parole Commission	2	0
State Prison	1	0
Correctional Institutions	1 ea.	0
Cultural Resources, Department of	1	0
Archives and History, Division of	5	1
State Library	5	5
Publications Division	1	1
Crime Control and Public Safety, Department of	2	1
North Carolina Crime Commission	1	0

Adjutant General	2	0
Elections, State Board of	2	0
Office of Administrative Hearings	2	0
State Personnel Commission	1	0
Office of State Personnel	1	1
Legislative Branch		
State Senators	1 ea.	1 ea.
State Representatives	1 ea.	1 ea.
Principal Clerk -- Senate	1	1
Principal Clerk -- House	1	1
Reading Clerk -- Senate	1	1
Reading Clerk -- House	1	1
Sergeant at Arms -- House	1	1
Sergeant at Arms -- Senate	1	1
Enrolling Clerk	1	0
Engrossing Clerk	1	0
Indexer of the Laws	1	0
Legislative Building Library	35	15
Judicial System		
Justices of the Supreme Court	1 ea.	1 ea.
Judges of the Court of Appeals	1 ea.	1 ea.
Judges of the Superior Court	1 ea.	0
Emergency and Special Judges of the Superior Court	1 ea.	0
District Court Judges	1 ea.	0
District Attorneys	1 ea.	0
Clerk of the Supreme Court	1	1
Clerk of the Court of Appeals	1	1
Administrative Office of the Courts	4	1
Supreme Court Library	AS MANY AS REQUESTED	
Colleges and Universities		
The University of North Carolina System		
Administrative Offices	3	0
University of North Carolina, Chapel Hill	65	25
University of North Carolina, Charlotte	3	1
University of North Carolina, Greensboro	3	1
University of North Carolina, Asheville	2	1
University of North Carolina, Wilmington	2	1
North Carolina State University, Raleigh	5	3
Appalachian State University	2	1
East Carolina University	3	2
Elizabeth City State University	2	1
Fayetteville State University	2	1

North Carolina Agricultural and Technical University	2	1
North Carolina Central University	5	5
Western Carolina University	2	1
University of North Carolina, Pembroke	2	1
Winston-Salem State University	2	1
North Carolina School of the Arts	1	1
Private Institutions		
Duke University	6	6
Davidson College	3	2
Wake Forest University	5	5
Lenoir Rhyne College	1	1
Elon College	1	1
Guilford College	1	1
Campbell University	5	5
Wingate College	1	1
Pfeiffer College	1	1
Barber Scotia College	1	1
Barton College	1	1
Shaw University	1	1
St. Augustine's College	1	1
<u>J. Johnson</u> C. Smith University	1	1
Belmont Abbey College	1	1
Bennett College	1	1
Catawba College	1	1
Gardner-Webb College	1	1
Greensboro College	1	1
High Point <u>College</u> <u>University</u>	1	1
Livingstone College	1	1
Mars Hill College	1	1
Meredith College	1	1
Methodist College	1	1
North Carolina Wesleyan College	1	1
Queens College	1	1
Sacred Heart College	1	1
St. Andrews Presbyterian College	1	1
Salem College	1	1
Warren Wilson College	1	1
County and Local Officials		
Clerks of the Superior Court	1 ea.	1 ea.
Register of Deeds	1 ea.	1 ea.
Federal, Out-of-State and Foreign		
Secretary to the President	1	0
Secretary of State	1	1
Secretary of Defense	1	0
Secretary of Agriculture	1	0
Secretary of the Interior	1	0
Secretary of Labor	1	1

Secretary of Commerce	1	1
Secretary of the Treasury	1	0
Secretary of Health, Education and Welfare	1	0
Secretary of Housing and Urban Development	1	0
Secretary of Transportation	1	0
Attorney General	1	0
Postmaster General	1	0
Bureau of Census	1	0
Bureau of Public Roads	1	0
Department of Justice	1	0
Department of Internal Revenue	1	0
Veterans' Administration	1	0
Farm Credit Administration	1	0
Securities and Exchange Commission	1	0
Social Security Board	1	0
Environmental Protection Agency	1	0
Library of Congress	8	2
Federal Judges resident in North Carolina	1 ea.	0
Federal District Attorneys resident in North Carolina	1 ea.	0
Marshal of the United States Supreme Court	1	0
Federal Clerks of Court resident in North Carolina	1 ea.	0
Supreme Court Library exchange list	1 ea.	0

One copy of the Session Laws shall be furnished the head of any department of State government created in the future.

State agencies, institutions, etc., not found in or covered by this list may, upon written request from their respective department head to the Secretary of State, and upon the discretion of the Secretary of State as to need, be issued copies of the Session Laws on a permanent loan basis with the understanding that should said copies be needed they will be recalled."

(cc) G.S. 153A-217 reads as rewritten:

"§ 153A-217. *Definitions.*

Unless otherwise clearly required by the context, the words and phrases defined in this section have the meanings indicated when used in this Part:

- (1) 'Commission' means the Social Services Commission.
- (2) 'Secretary' means the Secretary of Health and Human Services.
- (3) 'Department' means the Department of Health and Human Services.
- (4) 'Governing body' means the governing body of a county or city or the policy-making body for a district or regional confinement facility.
- (5) 'Local confinement facility' includes a county or city jail, a local lockup, a regional or district jail, a juvenile detention ~~home,~~ facility, a detention facility for adults operated by a local

government, and any other facility operated by a local government for confinement of persons awaiting trial or serving sentences except that it shall not include a county satellite jail/work release unit governed by Part 3 of Article 10 of Chapter 153A.

- (6) 'Prisoner' includes any person, adult or juvenile, confined or detained in a confinement facility.
- (7) 'Unit,' 'unit of local government,' or 'local government' means a county or city."

(dd) G.S. 153A-218 reads as rewritten:

"§ 153A-218. County confinement facilities.

A county may establish, acquire, erect, repair, maintain, and operate local confinement facilities and may for these purposes appropriate funds not otherwise limited as to use by law. A juvenile detention facility may be located in the same facility as a county jail provided that the juvenile detention facility meets the requirements of this Article and G.S. 147-33.40."

PART III. RECODIFICATION OF THE JUVENILE CODE

Section 5. Subchapter XI, Articles 41 through 59 of Chapter 7A of the General Statutes, the North Carolina Juvenile Code, Articles 24B and 39 of Chapter 7A of the General Statutes, Articles 2A, 4, 4A, and 10 of Chapter 110 of the General Statutes, Article 62 of Chapter 143 of the General Statutes, and G.S. 7A-289.13 are repealed.

Section 6. The General Statutes are amended by adding a new Chapter to read:

"Chapter 7B.

"Juvenile Code.

"SUBCHAPTER I. ABUSE, NEGLECT, DEPENDENCY.

"ARTICLE 1.

"Purposes; Definitions.

"§ 7B-100. Purpose.

This Subchapter shall be interpreted and construed so as to implement the following purposes and policies:

- (1) To provide procedures for the hearing of juvenile cases that assure fairness and equity and that protect the constitutional rights of juveniles and parents;
- (2) To develop a disposition in each juvenile case that reflects consideration of the facts, the needs and limitations of the juvenile, and the strengths and weaknesses of the family;
- (3) To provide for services for the protection of juveniles by means that respect both the right to family autonomy and the juveniles' needs for safety, continuity, and permanence; and
- (4) To provide standards for the removal, when necessary, of juveniles from their homes and for the return of juveniles to their homes consistent with preventing the unnecessary or inappropriate separation of juveniles from their parents.

"§ 7B-101. Definitions.

As used in this Subchapter, unless the context clearly requires otherwise, the following words have the listed meanings:

- (1) Abused juveniles. -- Any juvenile less than 18 years of age whose parent, guardian, custodian, or caretaker:
- a. Inflicts or allows to be inflicted upon the juvenile a serious physical injury by other than accidental means;
 - b. Creates or allows to be created a substantial risk of serious physical injury to the juvenile by other than accidental means;
 - c. Uses or allows to be used upon the juvenile cruel or grossly inappropriate procedures or cruel or grossly inappropriate devices to modify behavior;
 - d. Commits, permits, or encourages the commission of a violation of the following laws by, with, or upon the juvenile: first-degree rape as provided in G.S. 14-27.2; second degree rape as provided in G.S. 14-27.3; first-degree sexual offense as provided in G.S. 14-27.4; second degree sexual offense as provided in G.S. 14-27.5; sexual act by a custodian as provided in G.S. 14-27.7; crime against nature as provided in G.S. 14-177; incest as provided in G.S. 14-178 and G.S. 14-179; preparation of obscene photographs, slides, or motion pictures of the juvenile as provided in G.S. 14-190.5; employing or permitting the juvenile to assist in a violation of the obscenity laws as provided in G.S. 14-190.6; dissemination of obscene material to the juvenile as provided in G.S. 14-190.7 and G.S. 14-190.8; displaying or disseminating material harmful to the juvenile as provided in G.S. 14-190.14 and G.S. 14-190.15; first and second degree sexual exploitation of the juvenile as provided in G.S. 14-190.16 and G.S. 14-190.17; promoting the prostitution of the juvenile as provided in G.S. 14-190.18; and taking indecent liberties with the juvenile as provided in G.S. 14-202.1, regardless of the age of the parties;
 - e. Creates or allows to be created serious emotional damage to the juvenile. Serious emotional damage is evidenced by a juvenile's severe anxiety, depression, withdrawal, or aggressive behavior toward himself or others; or
 - f. Encourages, directs, or approves of delinquent acts involving moral turpitude committed by the juvenile.
- (2) Caretaker. -- Any person other than a parent, guardian, or custodian who has responsibility for the health and welfare of a juvenile in a residential setting. A person responsible for a juvenile's health and welfare means a stepparent, foster parent, an adult member of the juvenile's household, an adult relative entrusted with the juvenile's care, or any person such as a house parent or cottage parent who has primary responsibility for supervising a juvenile's health and welfare in a residential child care facility or residential educational facility. 'Caretaker' also means any person who has the responsibility for the care of a juvenile in a child care facility as defined in Article 7 of Chapter 110 of the General Statutes and includes any person who has the approval of the care provider to assume responsibility for the

- juveniles under the care of the care provider. Nothing in this subdivision shall be construed to impose a legal duty of support under Chapter 50 or Chapter 110 of the General Statutes. The duty imposed upon a caretaker as defined in this subdivision shall be for the purpose of this Subchapter only.
- (3) Clerk. -- Any clerk of superior court, acting clerk, or assistant or deputy clerk.
- (4) Community-based program. -- A program providing nonresidential or residential treatment to a juvenile in the community where the juvenile's family lives. A community-based program may include specialized foster care, family counseling, shelter care, and other appropriate treatment.
- (5) Court. -- The district court division of the General Court of Justice.
- (6) Custodian. -- The person or agency that has been awarded legal custody of a juvenile by a court.
- (7) Dependent juvenile. -- A juvenile in need of assistance or placement because the juvenile has no parent, guardian, or custodian responsible for the juvenile's care or supervision or whose parent, guardian, or custodian is unable to provide for the care or supervision and lacks an appropriate alternative child care arrangement.
- (8) Director. -- The director of the county department of social services in the county in which the juvenile resides or is found or the director's representative as authorized in G.S. 108A-14.
- (9) District. -- Any district court district as established by G.S. 7A-133.
- (10) Judge. -- Any district court judge.
- (11) Judicial district. -- Any district court district as established by G.S. 7A-133.
- (12) Juvenile. -- A person who has not reached the person's eighteenth birthday and is not married, emancipated, or a member of the armed forces of the United States.
- (13) Neglected juvenile. -- A juvenile who does not receive proper care, supervision, or discipline from the juvenile's parent, guardian, custodian, or caretaker; or who has been abandoned; or who is not provided necessary medical care; or who is not provided necessary remedial care; or who lives in an environment injurious to the juvenile's welfare; or who has been placed for care or adoption in violation of law. In determining whether a juvenile is a neglected juvenile, it is relevant whether that juvenile lives in a home where another juvenile has been subjected to abuse or neglect by an adult who regularly lives in the home.
- (14) Petitioner. -- The individual who initiates court action, whether by the filing of a petition or of a motion for review alleging the matter for adjudication.
- (15) Prosecutor. -- The district attorney or assistant district attorney assigned by the district attorney to juvenile proceedings.

- (16) Reasonable efforts. -- The diligent use of preventive or reunification services by a department of social services when a juvenile's remaining at home or returning home is consistent with achieving a safe, permanent home for the juvenile within a reasonable period of time.
- (17) Safe home. -- A home in which the juvenile is not at substantial risk of physical or emotional abuse or neglect.
- (18) Shelter care. -- The temporary care of a juvenile in a physically unrestricting facility pending court disposition.

The singular includes the plural, the masculine singular includes the feminine singular and masculine and feminine plural unless otherwise specified.

"ARTICLE 2.

"Jurisdiction.

"§ 7B-200. Jurisdiction.

(a) The court has exclusive, original jurisdiction over any case involving a juvenile who is alleged to be abused, neglected, or dependent. This jurisdiction does not extend to cases involving adult defendants alleged to be guilty of abuse or neglect.

The court also has exclusive original jurisdiction of the following proceedings:

- (1) Proceedings under the Interstate Compact on the Placement of Children set forth in Article 38 of this Chapter;
- (2) Proceedings involving judicial consent for emergency surgical or medical treatment for a juvenile when the juvenile's parent, guardian, custodian, or other person who has assumed the status and obligation of a parent without being awarded legal custody of the juvenile by a court refuses to consent for treatment to be rendered;
- (3) Proceedings to determine whether a juvenile should be emancipated;
- (4) Proceedings to terminate parental rights;
- (5) Proceedings to review the placement of a juvenile in foster care pursuant to an agreement between the juvenile's parents or guardian and a county department of social services;
- (6) Proceedings in which a person is alleged to have obstructed or interfered with an investigation required by G.S. 7B-302; and
- (7) Proceedings involving consent for an abortion on an unemancipated minor pursuant to Article 1A, Part 2 of Chapter 90 of the General Statutes.

(b) The court shall have jurisdiction over the parent or guardian of a juvenile who has been adjudicated abused, neglected, or dependent, as provided by G.S. 7B-904, provided the parent or guardian has been properly served with summons pursuant to G.S. 7B-406.

"§ 7B-201. Retention of jurisdiction.

When the court obtains jurisdiction over a juvenile, jurisdiction shall continue until terminated by order of the court or until the juvenile reaches the age of 18 years or is otherwise emancipated, whichever occurs first.

"ARTICLE 3.

"Screening of Abuse and Neglect Complaints."§ 7B-300. Protective services.

The director of the department of social services in each county of the State shall establish protective services for juveniles alleged to be abused, neglected, or dependent.

Protective services shall include the investigation and screening of complaints, casework, or other counseling services to parents, guardians, or other caretakers as provided by the director to help the parents, guardians, or other caretakers and the court to prevent abuse or neglect, to improve the quality of child care, to be more adequate parents, guardians, or caretakers, and to preserve and stabilize family life.

The provisions of this Article shall also apply to child care facilities as defined in G.S. 110-86.

"§ 7B-301. Duty to report abuse, neglect, dependency, or death due to maltreatment.

Any person or institution who has cause to suspect that any juvenile is abused, neglected, or dependent, as defined by G.S. 7B-101, or has died as the result of maltreatment, shall report the case of that juvenile to the director of the department of social services in the county where the juvenile resides or is found. The report may be made orally, by telephone, or in writing. The report shall include information as is known to the person making it including the name and address of the juvenile; the name and address of the juvenile's parent, guardian, or caretaker; the age of the juvenile; the names and ages of other juveniles in the home; the present whereabouts of the juvenile if not at the home address; the nature and extent of any injury or condition resulting from abuse, neglect, or dependency; and any other information which the person making the report believes might be helpful in establishing the need for protective services or court intervention. If the report is made orally or by telephone, the person making the report shall give the person's name, address, and telephone number. Refusal of the person making the report to give a name shall not preclude the department's investigation of the alleged abuse, neglect, dependency, or death as a result of maltreatment.

Upon receipt of any report of sexual abuse of the juvenile in a child care facility, the director shall notify the State Bureau of Investigation within 24 hours or on the next workday. If sexual abuse in a child care facility is not alleged in the initial report, but during the course of the investigation there is reason to suspect that sexual abuse has occurred, the director shall immediately notify the State Bureau of Investigation. Upon notification that sexual abuse may have occurred in a child care facility, the State Bureau of Investigation may form a task force to investigate the report.

"§ 7B-302. Investigation by director; access to confidential information; notification of person making the report.

When a report of abuse, neglect, or dependency is received, the director of the department of social services shall make a prompt and thorough investigation in order to ascertain the facts of the case, the extent of the abuse or neglect, and the risk of harm to the juvenile, in order to determine whether protective services should be provided or the complaint filed as a petition. When the report alleges abuse, the director shall immediately, but

no later than 24 hours after receipt of the report, initiate the investigation. When the report alleges neglect or dependency, the director shall initiate the investigation within 72 hours following receipt of the report. The investigation and evaluation shall include a visit to the place where the juvenile resides. All information received by the department of social services, including the identity of the reporter, shall be held in strictest confidence by the department.

When a report of suspected abuse, neglect, or dependency of a juvenile is received, the director of the department of social services shall immediately ascertain if other juveniles remain in the home, and, if so, initiate an investigation in order to determine whether they require protective services or whether immediate removal of the juveniles from the home is necessary for their protection.

If the investigation indicates that abuse, neglect, or dependency has occurred, the director shall decide whether immediate removal of the juvenile or any other juveniles in the home is necessary for their protection. If immediate removal does not seem necessary, the director shall immediately provide or arrange for protective services. If the parent, guardian, or other caretaker refuses to accept the protective services provided or arranged by the director, the director shall sign a complaint seeking to invoke the jurisdiction of the court for the protection of the juvenile or juveniles.

If immediate removal seems necessary for the protection of the juvenile or other juveniles in the home, the director shall sign a complaint which alleges the applicable facts to invoke the jurisdiction of the court. Where the investigation shows that it is warranted, a protective services worker may assume temporary custody of the juvenile for the juvenile's protection pursuant to Article 5 of this Chapter.

In performing any duties related to the investigation of the complaint or the provision or arrangement for protective services, the director may consult with any public or private agencies or individuals, including the available State or local law enforcement officers who shall assist in the investigation and evaluation of the seriousness of any report of abuse, neglect, or dependency when requested by the director. The director or the director's representative may make a written demand for any information or reports, whether or not confidential, that may in the director's opinion be relevant to the investigation of or the provision for protective services. Upon the director's or the director's representative's request and unless protected by the attorney-client privilege, any public or private agency or individual shall provide access to and copies of this confidential information and these records to the extent permitted by federal law and regulations. If a custodian of criminal investigative information or records believes that release of the information will jeopardize the right of the State to prosecute a defendant or the right of a defendant to receive a fair trial or will undermine an ongoing or future investigation, it may seek an order from a court of competent jurisdiction to prevent disclosure of the information. In such an action, the custodian of the records shall have the burden of showing by a preponderance of the evidence that disclosure of the information in question will jeopardize the right of the State to prosecute a defendant or the right of

a defendant to receive a fair trial or will undermine an ongoing or future investigation. Actions brought pursuant to this paragraph shall be set down for immediate hearing, and subsequent proceedings in the actions shall be accorded priority by the trial and appellate courts.

Within five working days after receipt of the report of abuse, neglect, or dependency, the director shall give written notice to the person making the report, unless requested by that person not to give notice, as to whether the report was accepted for investigation and whether the report was referred to the appropriate State or local law enforcement agency.

Within five working days after completion of the protective services investigation, the director shall give subsequent written notice to the person making the report, unless requested by that person not to give notice, as to whether there is a finding of abuse, neglect, or dependency, whether the county department of social services is taking action to protect the juvenile, and what action it is taking, including whether or not a petition was filed. The person making the report shall be informed of procedures necessary to request a review by the prosecutor of the director's decision not to file a petition. A request for review by the prosecutor shall be made within five working days of receipt of the second notification. The second notification shall include notice that, if the person making the report is not satisfied with the director's decision, the person may request review of the decision by the prosecutor within five working days of receipt. The person making the report may waive the person's right to this notification, and no notification is required if the person making the report does not identify himself to the director.

"§ 7B-303. Interference with investigation.

(a) If any person obstructs or interferes with an investigation required by G.S. 7B-302, the director may file a petition naming said person as respondent and requesting an order directing the respondent to cease such obstruction or interference. The petition shall contain the name and date of birth and address of the juvenile who is the subject of the investigation, shall specifically describe the conduct alleged to constitute obstruction of or interference with the investigation, and shall be verified.

(b) For purposes of this section, obstruction of or interference with an investigation means refusing to disclose the whereabouts of the juvenile, refusing to allow the director to have personal access to the juvenile, refusing to allow the director to observe or interview the juvenile in private, refusing to allow the director access to confidential information and records upon request pursuant to G.S. 7B-302, refusing to allow the director to arrange for an evaluation of the juvenile by a physician or other expert, or other conduct that makes it impossible for the director to carry out the duty to investigate.

(c) Upon filing of the petition, the court shall schedule a hearing to be held not less than five days after service of the petition and summons on the respondent. Service of the petition and summons and notice of hearing shall be made as provided by the Rules of Civil Procedure on the respondent; the juvenile's parent, guardian, custodian, or caretaker; and any other person determined by the court to be a necessary party. If at the hearing on the petition the court finds by clear, cogent, and convincing evidence that the

respondent, without lawful excuse, has obstructed or interfered with an investigation required by G.S. 7B-302, the court may order the respondent to cease such obstruction or interference. The burden of proof shall be on the petitioner.

(d) If the director has reason to believe that the juvenile is in need of immediate protection or assistance, the director shall so allege in the petition and may seek an ex parte order from the court. If the court, from the verified petition and any inquiry the court makes of the director, finds probable cause to believe both that the juvenile is at risk of immediate harm and that the respondent is obstructing or interfering with the director's ability to investigate to determine the juvenile's condition, the court may enter an ex parte order directing the respondent to cease such obstruction or interference. The order shall be limited to provisions necessary to enable the director to conduct an investigation sufficient to determine whether the juvenile is in need of immediate protection or assistance. Within 10 days after the entry of an ex parte order under this subsection, a hearing shall be held to determine whether there is good cause for the continuation of the order or the entry of a different order. An order entered under this subsection shall be served on the respondent along with a copy of the petition, summons, and notice of hearing.

(e) The director may be required at a hearing under this section to reveal the identity of any person who made a report of suspected abuse, neglect, or dependency as required by G.S. 7B-301.

(f) An order entered pursuant to this section is enforceable by civil or criminal contempt as provided in Chapter 5A of the General Statutes.

"§ 7B-304. Evaluation for court.

In all cases in which a petition is filed, the director of the department of social services shall prepare a report for the court containing a home placement plan and a treatment plan deemed by the director to be appropriate to the needs of the juvenile. The report shall be available to the court immediately following the adjudicatory hearing.

"§ 7B-305. Request for review by prosecutor.

The person making the report shall have five working days, from receipt of the decision of the director of the department of social services not to petition the court, to notify the prosecutor that the person is requesting a review. The prosecutor shall notify the person making the report and the director of the time and place for the review, and the director shall immediately transmit to the prosecutor a copy of the investigation report.

"§ 7B-306. Review by prosecutor.

The prosecutor shall review the director's determination that a petition should not be filed within 20 days after the person making the report is notified. The review shall include conferences with the person making the report, the protective services worker, the juvenile, if practicable, and other persons known to have pertinent information about the juvenile or the juvenile's family. At the conclusion of the conferences, the prosecutor may affirm the decision made by the director, may request the appropriate local law enforcement agency to investigate the allegations, or may direct the director to file a petition.

"§ 7B-307. Duty of director to report evidence of abuse, neglect; investigation by local law enforcement; notification of Department of Health and Human Services and State Bureau of Investigation.

(a) If the director finds evidence that a juvenile may have been abused as defined by G.S. 7B-101, the director shall make an immediate oral and subsequent written report of the findings to the district attorney or the district attorney's designee and the appropriate local law enforcement agency within 48 hours after receipt of the report. The local law enforcement agency shall immediately, but no later than 48 hours after receipt of the information, initiate and coordinate a criminal investigation with the protective services investigation being conducted by the county department of social services. Upon completion of the investigation, the district attorney shall determine whether criminal prosecution is appropriate and may request the director or the director's designee to appear before a magistrate.

If the director receives information that a juvenile may have been physically harmed in violation of any criminal statute by any person other than the juvenile's parent, guardian, custodian, or caretaker, the director shall make an immediate oral and subsequent written report of that information to the district attorney or the district attorney's designee and to the appropriate local law enforcement agency within 48 hours after receipt of the information. The local law enforcement agency shall immediately, but no later than 48 hours after receipt of the information, initiate a criminal investigation. Upon completion of the investigation, the district attorney shall determine whether criminal prosecution is appropriate.

If the report received pursuant to G.S. 7B-301 involves abuse or neglect of a juvenile in child care, the director shall notify the Department of Health and Human Services within 24 hours or on the next working day of receipt of the report.

(b) If the director finds evidence that a juvenile has been abused or neglected as defined by G.S. 7B-101 in a child care facility, the director shall immediately so notify the Department of Health and Human Services and, in the case of sexual abuse, the State Bureau of Investigation, in such a way as does not violate the law guaranteeing the confidentiality of the records of the department of social services.

(c) Upon completion of the investigation, the director shall give the Department written notification of the results of the investigation required by G.S. 7B-302. Upon completion of an investigation of sexual abuse in a child care facility, the director shall also make written notification of the results of the investigation to the State Bureau of Investigation.

The director of the department of social services shall submit a report of alleged abuse, neglect, or dependency cases or child fatalities that are the result of alleged maltreatment to the central registry under the policies adopted by the Social Services Commission.

"§ 7B-308. Authority of medical professionals in abuse cases.

(a) Any physician or administrator of a hospital, clinic, or other medical facility to which a suspected abused juvenile is brought for medical diagnosis or treatment shall have the right, when authorized by the chief district court judge of the district or the judge's designee, to retain physical custody of the juvenile in the facility when the physician who examines the juvenile

certifies in writing that the juvenile who is suspected of being abused should remain for medical treatment or that, according to the juvenile's medical evaluation, it is unsafe for the juvenile to return to the juvenile's parent, guardian, custodian, or caretaker. This written certification must be signed by the certifying physician and must include the time and date that the judicial authority to retain custody is given. Copies of the written certification must be appended to the juvenile's medical and judicial records and another copy must be given to the juvenile's parent, guardian, custodian, or caretaker. The right to retain custody in the facility shall exist for up to 12 hours from the time and date contained in the written certification.

(b) Immediately upon receipt of judicial authority to retain custody, the physician, the administrator, or that person's designee shall so notify the director of social services for the county in which the facility is located. The director shall treat this notification as a report of suspected abuse and shall immediately begin an investigation of the case.

(1) If the investigation reveals (i) that it is the opinion of the certifying physician that the juvenile is in need of medical treatment to cure or alleviate physical distress or to prevent the juvenile from suffering serious physical injury, and (ii) that it is the opinion of the physician that the juvenile should for these reasons remain in the custody of the facility for 12 hours, but (iii) that the juvenile's parent, guardian, custodian, or caretaker cannot be reached or, upon request, will not consent to the treatment within the facility, the director shall within the initial 12-hour period file a juvenile petition alleging abuse and setting forth supporting allegations and shall seek a nonsecure custody order. A petition filed and a nonsecure custody order obtained in accordance with this subdivision shall come on for hearing under the regular provisions of this Subchapter unless the director and the certifying physician together voluntarily dismiss the petition.

(2) In all cases except those described in subdivision (1) above, the director shall conduct the investigation and may initiate juvenile proceedings and take all other steps authorized by the regular provisions of this Subchapter. If the director decides not to file a petition, the physician, the administrator, or that person's designee may ask the prosecutor to review this decision according to the provisions of G.S. 7B-305 and G.S. 7B-306.

(c) If, upon hearing, the court determines that the juvenile is found in a county other than the county of legal residence, in accord with G.S. 153A-257, the juvenile may be transferred, in accord with G.S. 7B-903(2), to the custody of the department of social services in the county of residence.

(d) If the court, upon inquiry, determines that the medical treatment rendered was necessary and appropriate, the cost of that treatment may be charged to the parents, guardian, custodian, or caretaker, or, if the parents are unable to pay, to the county of residence in accordance with G.S. 7B-903 and G.S. 7B-904.

(e) Except as otherwise provided, a petition begun under this section shall proceed in like manner with petitions begun under G.S. 7B-302.

(f) The procedures in this section are in addition to, and not in derogation of, the abuse and neglect reporting provisions of G.S. 7B-301 and the temporary custody provisions of G.S. 7B-500. Nothing in this section shall preclude a physician or administrator and a director of social services from following the procedures of G.S. 7B-301 and G.S. 7B-500 whenever these procedures are more appropriate to the juvenile's circumstances.

"§ 7B-309. Immunity of persons reporting and cooperating in an investigation.

Anyone who makes a report pursuant to this Article, cooperates with the county department of social services in a protective services inquiry or investigation, testifies in any judicial proceeding resulting from a protective services report or investigation, or otherwise participates in the program authorized by this Article, is immune from any civil or criminal liability that might otherwise be incurred or imposed for that action provided that the person was acting in good faith. In any proceeding involving liability, good faith is presumed.

"§ 7B-310. Privileges not grounds for failing to report or for excluding evidence.

No privilege shall be grounds for any person or institution failing to report that a juvenile may have been abused, neglected, or dependent, even if the knowledge or suspicion is acquired in an official professional capacity, except when the knowledge or suspicion is gained by an attorney from that attorney's client during representation only in the abuse, neglect, or dependency case. No privilege, except the attorney-client privilege, shall be grounds for excluding evidence of abuse, neglect, or dependency in any judicial proceeding (civil, criminal, or juvenile) in which a juvenile's abuse, neglect, or dependency is in issue nor in any judicial proceeding resulting from a report submitted under this Article, both as this privilege relates to the competency of the witness and to the exclusion of confidential communications.

"§ 7B-311. Central registry.

The Department of Health and Human Services shall maintain a central registry of abuse, neglect, and dependency cases and child fatalities that are the result of alleged maltreatment that are reported under this Article in order to compile data for appropriate study of the extent of abuse and neglect within the State and to identify repeated abuses of the same juvenile or of other juveniles in the same family. This data shall be furnished by county directors of social services to the Department of Health and Human Services and shall be confidential, subject to policies adopted by the Social Services Commission providing for its use for study and research and for other appropriate disclosure. Data shall not be used at any hearing or court proceeding unless based upon a final judgment of a court of law.

"ARTICLE 4.

"Venue; Petitions.

"§ 7B-400. Venue; pleading.

A proceeding in which a juvenile is alleged to be abused, neglected, or dependent may be commenced in the district in which the juvenile resides or is present. When a proceeding is commenced in a district other than that of the juvenile's residence, the court, on its own motion or upon motion of any

party, may transfer the proceeding to the court in the district where the juvenile resides. A transfer under this section may be made at any time.

"§ 7B-401. Pleading and process.

The pleading in an abuse, neglect, or dependency action is the petition. The process in an abuse, neglect, or dependency action is the summons.

"§ 7B-402. Petition.

The petition shall contain the name, date of birth, address of the juvenile, the name and last known address of the juvenile's parent, guardian, or custodian and shall allege the facts which invoke jurisdiction over the juvenile. The petition may contain information on more than one juvenile when the juveniles are from the same home and are before the court for the same reason.

Sufficient copies of the petition shall be prepared so that copies will be available for each parent if living separate and apart, the guardian, custodian, or caretaker, the guardian ad litem, the social worker, and any person determined by the court to be a necessary party.

"§ 7B-403. Receipt of reports; filing of petition.

(a) All reports concerning a juvenile alleged to be abused, neglected, or dependent shall be referred to the director of the department of social services for screening. Thereafter, if it is determined by the director that a report should be filed as a petition, the petition shall be drawn by the director, verified before an official authorized to administer oaths, and filed by the clerk, recording the date of filing.

(b) A decision of the director of social services not to file a report as a petition shall be reviewed by the prosecutor if review is requested pursuant to G.S. 7B-305.

"§ 7B-404. Immediate need for petition when clerk's office is closed.

(a) When the office of the clerk is closed, a magistrate may be authorized by the chief district court judge to draw, verify, and issue petitions as follows:

(1) When the director of the department of social services requests a petition alleging a juvenile to be abused, neglected, or dependent,
or

(2) When the director of the department of social services requests a petition alleging the obstruction of or interference with an investigation required by G.S. 7B-302.

(b) The authority of the magistrate under this section is limited to emergency situations when a petition is required in order to obtain a nonsecure custody order or an order under G.S. 7B-303. Any petition issued under this section shall be delivered to the clerk's office for processing as soon as that office is open for business.

"§ 7B-405. Commencement of action.

An action is commenced by the filing of a petition in the clerk's office when that office is open or by the issuance of a juvenile petition by a magistrate when the clerk's office is closed, which issuance shall constitute filing.

"§ 7B-406. Issuance of summons.

(a) Immediately after a petition has been filed alleging that a juvenile is abused, neglected, or dependent, the clerk shall issue a summons to the

parent, guardian, custodian, or caretaker requiring them to appear for a hearing at the time and place stated in the summons. A copy of the petition shall be attached to each summons.

(b) A summons shall be on a printed form supplied by the Administrative Office of the Courts and shall include:

- (1) Notice of the nature of the proceeding;
- (2) Notice of any right to counsel and information about how to seek the appointment of counsel prior to a hearing;
- (3) Notice that, if the court determines at the hearing that the allegations of the petition are true, the court will conduct a dispositional hearing to consider the needs of the juvenile and enter an order designed to meet those needs and the objectives of the State; and
- (4) Notice that the dispositional order or a subsequent order:
 - a. May remove the juvenile from the custody of the parent, guardian, or custodian.
 - b. May require that the juvenile receive medical, psychiatric, psychological, or other treatment and that the parent participate in the treatment.
 - c. May require the parent to undergo psychiatric, psychological, or other treatment or counseling for the purpose of remedying the behaviors or conditions that are alleged in the petition or that contributed to the removal of the juvenile from the custody of that person.
 - d. May order the parent to pay for treatment that is ordered for the juvenile or the parent.

(c) The summons shall advise the parent that upon service, jurisdiction over that person is obtained and that failure to comply with any order of the court pursuant to G.S. 7B-904 may cause the court to issue a show cause order for contempt.

(d) A summons shall be directed to the person summoned to appear and shall be delivered to any person authorized to serve process.

"§ 7B-407. Service of summons.

The summons shall be personally served upon the parent, guardian, custodian, or caretaker, not less than five days prior to the date of the scheduled hearing. The time for service may be waived in the discretion of the court.

If the parent, guardian, custodian, or caretaker entitled to receive a summons cannot be found by a diligent effort, the court may authorize service of the summons and petition by mail or by publication. The cost of the service by publication shall be advanced by the petitioner and may be charged as court costs as the court may direct.

If the parent, guardian, custodian, or caretaker is personally served as herein provided and fails without reasonable cause to appear and to bring the juvenile before the court, the parent, guardian, custodian, or caretaker may be proceeded against as for contempt of court.

"ARTICLE 5.

"Temporary Custody; Nonsecure Custody; Custody Hearings.

"§ 7B-500. Taking a juvenile into temporary custody.

Temporary custody means the taking of physical custody and providing personal care and supervision until a court order for nonsecure custody can be obtained. A juvenile may be taken into temporary custody without a court order by a law enforcement officer or a department of social services worker if there are reasonable grounds to believe that the juvenile is abused, neglected, or dependent and that the juvenile would be injured or could not be taken into custody if it were first necessary to obtain a court order. If a department of social services worker takes a juvenile into temporary custody under this section, the worker may arrange for the placement, care, supervision, and transportation of the juvenile.

"§ 7B-501. Duties of person taking juvenile into temporary custody.

(a) A person who takes a juvenile into custody without a court order under G.S. 7B-500 shall proceed as follows:

- (1) Notify the juvenile's parent, guardian, custodian, or caretaker that the juvenile has been taken into temporary custody and advise the parent, guardian, custodian, or caretaker of the right to be present with the juvenile until a determination is made as to the need for nonsecure custody. Failure to notify the parent that the juvenile is in custody shall not be grounds for release of the juvenile.
- (2) Release the juvenile to the juvenile's parent, guardian, custodian, or caretaker if the person having the juvenile in temporary custody decides that continued custody is unnecessary.
- (3) The person having temporary custody shall communicate with the director of the department of social services who shall consider prehearing diversion. If the decision is made to file a petition, the director shall contact the judge or person delegated authority pursuant to G.S. 7B-502 for a determination of the need for continued custody.

(b) A juvenile taken into temporary custody under this Article shall not be held for more than 12 hours, or for more than 24 hours if any of the 12 hours falls on a Saturday, Sunday, or legal holiday, unless:

- (1) A petition or motion for review has been filed by the director of the department of social services, and
- (2) An order for nonsecure custody has been entered by the court.

"§ 7B-502. Authority to issue custody orders; delegation.

In the case of any juvenile alleged to be within the jurisdiction of the court, the court may order that the juvenile be placed in nonsecure custody pursuant to criteria set out in G.S. 7B-503 when custody of the juvenile is necessary.

Any district court judge shall have the authority to issue nonsecure custody orders pursuant to G.S. 7B-503. The chief district court judge may delegate the court's authority to persons other than district court judges by administrative order which shall be filed in the office of the clerk of superior court. The administrative order shall specify which persons shall be contacted for approval of a nonsecure custody order pursuant to G.S. 7B-503.

"§ 7B-503. Criteria for nonsecure custody.

When a request is made for nonsecure custody, the court shall first consider release of the juvenile to the juvenile's parent, relative, guardian, custodian, or other responsible adult. An order for nonsecure custody shall be made only when there is a reasonable factual basis to believe the matters alleged in the petition are true, and

- (1) The juvenile has been abandoned; or
- (2) The juvenile has suffered physical injury or sexual abuse; or
- (3) The juvenile is exposed to a substantial risk of physical injury or sexual abuse because the parent, guardian, custodian, or caretaker has created the conditions likely to cause injury or abuse or has failed to provide, or is unable to provide, adequate supervision or protection; or
- (4) The juvenile is in need of medical treatment to cure, alleviate, or prevent suffering serious physical harm which may result in death, disfigurement, or substantial impairment of bodily functions, and the juvenile's parent, guardian, custodian, or caretaker is unwilling or unable to provide or consent to the medical treatment; or
- (5) The parent, guardian, custodian, or caretaker consents to the nonsecure custody order; or
- (6) The juvenile is a runaway and consents to nonsecure custody.

A juvenile alleged to be abused, neglected, or dependent shall be placed in nonsecure custody only when there is a reasonable factual basis to believe that there are no other reasonable means available to protect the juvenile. In no case shall a juvenile alleged to be abused, neglected, or dependent be placed in secure custody.

"§ 7B-504. Order for nonsecure custody.

The custody order shall be in writing and shall direct a law enforcement officer or other authorized person to assume custody of the juvenile and to make due return on the order. A copy of the order shall be given to the juvenile's parent, guardian, custodian, or caretaker by the official executing the order.

An officer receiving an order for custody which is complete and regular on its face may execute it in accordance with its terms. The officer is not required to inquire into the regularity or continued validity of the order and shall not incur criminal or civil liability for its due service.

"§ 7B-505. Place of nonsecure custody.

A juvenile meeting the criteria set out in G.S. 7B-503 may be placed in nonsecure custody with the department of social services or a person designated in the order for temporary residential placement in:

- (1) A licensed foster home or a home otherwise authorized by law to provide such care; or
- (2) A facility operated by the department of social services; or
- (3) Any other home or facility approved by the court and designated in the order.

In placing a juvenile in nonsecure custody under this section, the court shall first consider whether a relative of the juvenile is willing and able to provide proper care and supervision of the juvenile in a safe home. If the court finds that the relative is willing and able to provide proper care and

supervision in a safe home, then the court shall order placement of the juvenile with the relative. Prior to placement of a juvenile with a relative outside of this State, the placement must be in accordance with the Interstate Compact on the Placement of Children, Article 38 of this Chapter.

"§ 7B-506. *Hearing to determine need for continued nonsecure custody.*

(a) No juvenile shall be held under a nonsecure custody order for more than seven calendar days without a hearing on the merits or a hearing to determine the need for continued custody. A hearing on nonsecure custody conducted under this subsection may be continued for up to 10 business days with the consent of the juvenile's parent, guardian, or custodian and, if appointed, the juvenile's guardian ad litem. In addition, the court may require the consent of additional parties or may schedule the hearing on custody despite a party's consent to a continuance. In every case in which an order has been entered by an official exercising authority delegated pursuant to G.S. 7B-502, a hearing to determine the need for continued custody shall be conducted on the day of the next regularly scheduled session of district court in the city or county where the order was entered if such session precedes the expiration of the applicable time period set forth in this subsection: Provided, that if such session does not precede the expiration of the time period, the hearing may be conducted at another regularly scheduled session of district court in the district where the order was entered.

(b) At a hearing to determine the need for continued custody, the court shall receive testimony and shall allow the guardian ad litem, or juvenile, and the juvenile's parent, guardian, or custodian an opportunity to introduce evidence, to be heard in the person's own behalf, and to examine witnesses. The State shall bear the burden at every stage of the proceedings to provide clear and convincing evidence that the juvenile's placement in custody is necessary. The court shall not be bound by the usual rules of evidence at such hearings.

(c) The court shall be bound by criteria set forth in G.S. 7B-503 in determining whether continued custody is warranted.

(d) If the court determines that the juvenile meets the criteria in G.S. 7B-503 and should continue in custody, the court shall issue an order to that effect. The order shall be in writing with appropriate findings of fact. The findings of fact shall include the evidence relied upon in reaching the decision and the purposes which continued custody is to achieve.

(e) If the court orders at the hearing required in subsection (a) of this section that the juvenile remain in custody, a subsequent hearing on continued custody shall be held within seven business days of that hearing, excluding Saturdays, Sundays, and legal holidays, and pending a hearing on the merits, hearings thereafter shall be held at intervals of no more than 30 calendar days.

(f) Hearings conducted under subsection (e) of this section may be waived only with the consent of the juvenile's parent, guardian, or custodian, and, if appointed, the juvenile's guardian ad litem.

The court may require the consent of additional parties or schedule a hearing despite a party's consent to waiver.

(g) Any order authorizing the continued nonsecure custody of a juvenile shall include findings as to whether reasonable efforts have been made to prevent or eliminate the need for placement of the juvenile in custody and may provide for services or other efforts aimed at returning the juvenile promptly to a safe home. A finding that reasonable efforts have not been made shall not preclude the entry of an order authorizing continued custody when the court finds that continued custody is necessary for the protection of the juvenile. Where efforts to prevent the need for the juvenile's placement were precluded by an immediate threat of harm to the juvenile, the court may find that the placement of the juvenile in the absence of such efforts was reasonable. If the court finds through written findings of fact that efforts to eliminate the need for placement of the juvenile in custody clearly would be futile or would be inconsistent with the juvenile's safety and need for a safe, permanent home within a reasonable period of time, then the court shall specify in its order that reunification efforts are not required or order that reunification efforts cease.

(h) At each hearing to determine the need for continued nonsecure custody, the court shall:

- (1) Inquire as to the identity and location of any missing parent. The court shall include findings as to the efforts undertaken to locate the missing parent and to serve that parent. The order may provide for specific efforts aimed at determining the identity and location of any missing parent;
- (2) Inquire as to whether a relative of the juvenile is willing and able to provide proper care and supervision of the juvenile in a safe home. If the court finds that the relative is willing and able to provide proper care and supervision in a safe home, then the court shall order temporary placement of the juvenile with the relative. Placement of a juvenile with a relative outside of this State must be in accordance with the Interstate Compact on the Placement of Children set forth in Article 38 of this Chapter; and
- (3) Inquire as to whether there are other juveniles remaining in the home from which the juvenile was removed and, if there are, inquire as to the specific findings of the investigation conducted under G.S. 7B-302 and any actions taken or services provided by the director for the protection of the other juveniles.

"§ 7B-507. Telephonic communication authorized.

All communications, notices, orders, authorizations, and requests authorized or required by G.S. 7B-501, 7B-503, and 7B-504 may be made by telephone when other means of communication are impractical. All written orders pursuant to telephonic communication shall bear the name and the title of the person communicating by telephone, the signature and the title of the official entering the order, and the hour and the date of the authorization.

"ARTICLE 6.

"Basic Rights.

"§ 7B-600. Appointment of guardian.

In any case when no parent appears in a hearing with the juvenile or when the court finds it would be in the best interests of the juvenile, the

court may appoint a guardian of the person for the juvenile. The guardian shall operate under the supervision of the court with or without bond and shall file only such reports as the court shall require. The guardian shall have the care, custody, and control of the juvenile or may arrange a suitable placement for the juvenile and may represent the juvenile in legal actions before any court. The guardian may consent to certain actions on the part of the juvenile in place of the parent including (i) marriage, (ii) enlisting in the armed forces, and (iii) enrollment in school. The guardian may also consent to any necessary remedial, psychological, medical, or surgical treatment for the juvenile. The authority of the guardian shall continue until the guardianship is terminated by court order, until the juvenile is emancipated pursuant to Article 35 of Subchapter IV of this Chapter, or until the juvenile reaches the age of majority.

"§ 7B-601. Appointment and duties of guardian ad litem.

(a) When in a petition a juvenile is alleged to be abused or neglected, the court shall appoint a guardian ad litem to represent the juvenile. When a juvenile is alleged to be dependent, the court may appoint a guardian ad litem to represent the juvenile. The guardian ad litem and attorney advocate have standing to represent the juvenile in all actions under this Subchapter where they have been appointed. The appointment shall be made pursuant to the program established by Article 12 of this Chapter unless representation is otherwise provided pursuant to G.S. 7B-1202 or G.S. 7B-1203. The appointment shall terminate at the end of two years. The court may reappoint the guardian ad litem pursuant to a showing of good cause upon motion of any party, including the guardian ad litem, or of the court. In every case where a nonattorney is appointed as a guardian ad litem, an attorney shall be appointed in the case in order to assure protection of the juvenile's legal rights through the dispositional phase of the proceedings, and after disposition when necessary to further the best interests of the juvenile. The duties of the guardian ad litem program shall be to make an investigation to determine the facts, the needs of the juvenile, and the available resources within the family and community to meet those needs; to facilitate, when appropriate, the settlement of disputed issues; to offer evidence and examine witnesses at adjudication; to explore options with the court at the dispositional hearing; and to protect and promote the best interests of the juvenile until formally relieved of the responsibility by the court.

(b) The court may order the department of social services or the guardian ad litem to conduct follow-up investigations to ensure that the orders of the court are being properly executed and to report to the court when the needs of the juvenile are not being met. The court may also authorize the guardian ad litem to accompany the juvenile to court in any criminal action wherein the juvenile may be called on to testify in a matter relating to abuse.

(c) The court may grant the guardian ad litem the authority to demand any information or reports, whether or not confidential, that may in the guardian ad litem's opinion be relevant to the case. Neither the physician-patient privilege nor the husband-wife privilege may be invoked to prevent the guardian ad litem and the court from obtaining such information. The confidentiality of the information or reports shall be respected by the

guardian ad litem, and no disclosure of any information or reports shall be made to anyone except by order of the court or unless otherwise provided by law.

"§ 7B-602. Parent's right to counsel.

In cases where the juvenile petition alleges that a juvenile is abused, neglected, or dependent, the parent has the right to counsel and to appointed counsel in cases of indigency unless that person waives the right. In no case may the court appoint a county attorney, prosecutor, or public defender.

"§ 7B-603. Payment of court-appointed attorney or guardian ad litem.

An attorney or guardian ad litem appointed pursuant to G.S. 7B-601 or G.S. 7B-602 pursuant to any other provision of the Juvenile Code shall be paid a reasonable fee fixed by the court in the same manner as fees for attorneys appointed in cases of indigency or by direct engagement for specialized guardian ad litem services through the Administrative Office of the Courts. The court may require payment of the attorney or guardian ad litem fee from a person other than the juvenile as provided in G.S. 7A-450.1, 7A-450.2, and 7A-450.3. In no event shall the parent or guardian be required to pay the fees for a court-appointed attorney or guardian ad litem in an abuse, neglect, or dependency proceeding unless the juvenile has been adjudicated to be abused, neglected, or dependent, or, in a proceeding to terminate parental rights, unless the parent's rights have been terminated. A person who does not comply with the court's order of payment may be punished for contempt as provided in G.S. 5A-21.

"ARTICLE 7.

"Discovery.

"§ 7B-700. Regulation of discovery; protective orders.

(a) Upon written motion of a party and a finding of good cause, the court may at any time order that discovery be denied, restricted, or deferred.

(b) The court may permit a party seeking relief under subsection (a) of this section to submit supporting affidavits or statements to the court for in camera inspection. If, thereafter, the court enters an order granting relief under subsection (a) of this section, the material submitted in camera must be available to the Court of Appeals in the event of an appeal.

"ARTICLE 8.

"Hearing Procedures.

"§ 7B-800. Amendment of petition.

The court may permit a petition to be amended when the amendment does not change the nature of the conditions upon which the petition is based.

"§ 7B-801. Adjudicatory hearing.

The adjudicatory hearing shall be held in the district at such time and place as the chief district court judge shall designate. The court may exclude the public from the hearing unless the juvenile moves that the hearing be open, which motion shall be granted.

"§ 7B-802. Conduct of hearing.

The adjudicatory hearing shall be a judicial process designed to adjudicate the existence or nonexistence of any of the conditions alleged in a petition. In the adjudicatory hearing, the court shall protect the rights of the juvenile and the juvenile's parent to assure due process of law.

"§ 7B-803. Continuances.

The court may, for good cause, continue the hearing for as long as is reasonably required to receive additional evidence, reports, or assessments that the court has requested, or other information needed in the best interests of the juvenile and to allow for a reasonable time for the parties to conduct expeditious discovery. Otherwise, continuances shall be granted only in extraordinary circumstances when necessary for the proper administration of justice or in the best interests of the juvenile.

"§ 7B-804. Rules of evidence.

Where the juvenile is alleged to be abused, neglected, or dependent, the rules of evidence in civil cases shall apply.

"§ 7B-805. Quantum of proof in adjudicatory hearing.

The allegations in a petition alleging abuse, neglect, or dependency shall be proved by clear and convincing evidence.

"§ 7B-806. Record of proceedings.

All adjudicatory and dispositional hearings shall be recorded by stenographic notes or by electronic or mechanical means. Records shall be reduced to a written transcript only when timely notice of appeal has been given. The court may order that other hearings be recorded.

"§ 7B-807. Adjudication.

If the court finds that the allegations in the petition have been proven by clear and convincing evidence, the court shall so state. If the court finds that the allegations have not been proven, the court shall dismiss the petition with prejudice, and if the juvenile is in nonsecure custody, the juvenile shall be released to the parent, guardian, custodian, or caretaker.

"§ 7B-808. Predisposition investigation and report.

The court shall proceed to the dispositional hearing upon receipt of sufficient social, medical, psychiatric, psychological, and educational information. No predisposition report shall be submitted to or considered by the court prior to the completion of the adjudicatory hearing. The court shall permit the guardian ad litem or juvenile to inspect any predisposition report to be considered by the court in making the disposition unless the court determines that disclosure would seriously harm the juvenile's treatment or would violate a promise of confidentiality. Opportunity to offer evidence in rebuttal shall be afforded the guardian ad litem or juvenile, and the juvenile's parent, guardian, or custodian at the dispositional hearing. The court may order counsel not to disclose parts of the report to the guardian ad litem or juvenile, or the juvenile's parent, guardian, or custodian if the court finds that disclosure would seriously harm the treatment of the juvenile or would violate a promise of confidentiality given to a source of information.

"ARTICLE 9.

"Dispositions.

"§ 7B-900. Purpose.

The purpose of dispositions in juvenile actions is to design an appropriate plan to meet the needs of the juvenile and to achieve the objectives of the State in exercising jurisdiction. If possible, the initial approach should involve working with the juvenile and the juvenile's family in their own home so that the appropriate community resources may be involved in care, supervision, and treatment according to the needs of the juvenile. Thus, the

court should arrange for appropriate community-level services to be provided to the juvenile and the juvenile's family in order to strengthen the home situation.

"§ 7B-901. Dispositional hearing.

The dispositional hearing may be informal and the court may consider written reports or other evidence concerning the needs of the juvenile. The juvenile and the juvenile's parent, guardian, or custodian shall have an opportunity to present evidence, and they may advise the court concerning the disposition they believe to be in the best interests of the juvenile. The court may exclude the public from the hearing unless the juvenile moves that the hearing be open, which motion shall be granted.

"§ 7B-902. Consent judgment in abuse, neglect, or dependency proceeding.

Nothing in this Article precludes the court from entering a consent order or judgment on a petition for abuse, neglect, or dependency when all parties are present, the juvenile is represented by counsel, and all other parties are either represented by counsel or have waived counsel, and sufficient findings of fact are made by the court.

"§ 7B-903. Dispositional alternatives for abused, neglected, or dependent juvenile.

The following alternatives for disposition shall be available to any court exercising jurisdiction, and the court may combine any of the applicable alternatives when the court finds the disposition to be in the best interests of the juvenile:

- (1) The court may dismiss the case or continue the case in order to allow the parent or others to take appropriate action.
- (2) In the case of any juvenile who needs more adequate care or supervision or who needs placement, the court may:
 - a. Require that the juvenile be supervised in the juvenile's own home by the department of social services in the juvenile's county, or by other personnel as may be available to the court, subject to conditions applicable to the parent or juvenile as the court may specify; or
 - b. Place the juvenile in the custody of a parent, relative, private agency offering placement services, or some other suitable person; or
 - c. Place the juvenile in the custody of the department of social services in the county of the juvenile's residence, or in the case of a juvenile who has legal residence outside the State, in the physical custody of the department of social services in the county where the juvenile is found so that agency may return the juvenile to the responsible authorities in the juvenile's home state. The director may, unless otherwise ordered by the court, arrange for, provide, or consent to, needed routine or emergency medical or surgical care or treatment. In the case where the parent is unknown, unavailable, or unable to act on behalf of the juvenile, the director may, unless otherwise ordered by the court, arrange for, provide, or consent to any psychiatric, psychological, educational, or other remedial evaluations or treatment for the juvenile placed

by a court or the court's designee in the custody or physical custody of a county department of social services under the authority of this or any other Chapter of the General Statutes. Prior to exercising this authority, the director shall make reasonable efforts to obtain consent from a parent or guardian of the affected juvenile. If the director cannot obtain such consent, the director shall promptly notify the parent or guardian that care or treatment has been provided and shall give the parent frequent status reports on the circumstances of the juvenile. Upon request of a parent or guardian of the affected juvenile, the results or records of the aforementioned evaluations, findings, or treatment shall be made available to such parent or guardian by the director unless prohibited by G.S. 122C-53(d).

(3) In any case, the court may order that the juvenile be examined by a physician, psychiatrist, psychologist, or other qualified expert as may be needed for the court to determine the needs of the juvenile:

- a. Upon completion of the examination, the court shall conduct a hearing to determine whether the juvenile is in need of medical, surgical, psychiatric, psychological, or other treatment and who should pay the cost of the treatment. The county manager, or such person who shall be designated by the chairman of the county commissioners, of the juvenile's residence shall be notified of the hearing and allowed to be heard. If the court finds the juvenile to be in need of medical, surgical, psychiatric, psychological, or other treatment, the court shall permit the parent or other responsible persons to arrange for treatment. If the parent declines or is unable to make necessary arrangements, the court may order the needed treatment, surgery, or care, and the court may order the parent to pay the cost of the care pursuant to G.S. 7B-904. If the court finds the parent is unable to pay the cost of treatment, the court shall order the county to arrange for treatment of the juvenile and to pay for the cost of the treatment. The county department of social services shall recommend the facility that will provide the juvenile with treatment.
- b. If the court believes, or if there is evidence presented to the effect that the juvenile is mentally ill or is developmentally disabled, the court shall refer the juvenile to the area mental health, developmental disabilities, and substance abuse services director for appropriate action. A juvenile shall not be committed directly to a State hospital or mental retardation center; and orders purporting to commit a juvenile directly to a State hospital or mental retardation center except for an examination to determine capacity to proceed shall be void and of no effect. The area mental health, developmental disabilities, and substance abuse director shall be responsible

for arranging an interdisciplinary evaluation of the juvenile and mobilizing resources to meet the juvenile's needs. If institutionalization is determined to be the best service for the juvenile, admission shall be with the voluntary consent of the parent or guardian. If the parent, guardian, or custodian refuses to consent to a mental hospital or retardation center admission after such institutionalization is recommended by the area mental health, developmental disabilities, and substance abuse director, the signature and consent of the court may be substituted for that purpose. In all cases in which a regional mental hospital refuses admission to a juvenile referred for admission by a court and an area mental health, developmental disabilities, and substance abuse director or discharges a juvenile previously admitted on court referral prior to completion of treatment, the hospital shall submit to the court a written report setting out the reasons for denial of admission or discharge and setting out the juvenile's diagnosis, indications of mental illness, indications of need for treatment, and a statement as to the location of any facility known to have a treatment program for the juvenile in question.

"§ 7B-904. Authority over parents of juvenile adjudicated as abused, neglected, or dependent.

(a) If the court orders medical, surgical, psychiatric, psychological, or other treatment pursuant to G.S. 7B-903, the court may order the parent or other responsible parties to pay the cost of the treatment or care ordered.

(b) At the dispositional hearing or a subsequent hearing in the case of a juvenile who has been adjudicated abused, neglected, or dependent, if the court finds that it is in the best interests of the juvenile for the parent to be directly involved in the juvenile's treatment, the court may order the parent to participate in medical, psychiatric, psychological, or other treatment of the juvenile. The cost of the treatment shall be paid pursuant to G.S. 7B-903.

(c) At the dispositional hearing or a subsequent hearing in the case of a juvenile who has been adjudicated abused, neglected, or dependent, the court may determine whether the best interests of the juvenile require that the parent undergo psychiatric, psychological, or other treatment or counseling directed toward remediating or remedying behaviors or conditions that led to or contributed to the juvenile's adjudication or to the court's decision to remove custody of the juvenile from the parent. If the court finds that the best interests of the juvenile require the parent undergo treatment, it may order the parent to comply with a plan of treatment approved by the court or condition legal custody or physical placement of the juvenile with the parent upon the parent's compliance with the plan of treatment. The court may order the parent to pay the cost of treatment ordered pursuant to this subsection. In cases in which the court has conditioned legal custody or physical placement of the juvenile with the parent upon the parent's compliance with a plan of treatment, the court may charge the cost of the treatment to the county of the juvenile's residence if the court finds the parent is unable to pay the cost of the treatment. In all

other cases, if the court finds the parent is unable to pay the cost of the treatment ordered pursuant to this subsection, the court may order the parent to receive treatment currently available from the area mental health program that serves the parent's catchment area.

(d) Whenever legal custody of a juvenile is vested in someone other than the juvenile's parent, after due notice to the parent and after a hearing, the court may order that the parent pay a reasonable sum that will cover, in whole or in part, the support of the juvenile after the order is entered. If the court requires the payment of child support, the amount of the payments shall be determined as provided in G.S. 50-13.4(c). If the court places a juvenile in the custody of a county department of social services and if the court finds that the parent is unable to pay the cost of the support required by the juvenile, the cost shall be paid by the county department of social services in whose custody the juvenile is placed, provided the juvenile is not receiving care in an institution owned or operated by the State or federal government or any subdivision thereof.

(e) Failure of a parent who is personally served to participate in or comply with this section may result in a proceeding for civil contempt.

"§ 7B-905. Dispositional order.

(a) The dispositional order shall be in writing and shall contain appropriate findings of fact and conclusions of law. The court shall state with particularity, both orally and in the written order of disposition, the precise terms of the disposition including the kind, duration, and the person who is responsible for carrying out the disposition and the person or agency in whom custody is vested.

(b) A dispositional order under which a juvenile is removed from the custody of a parent or other person who has assumed the status and obligation of a parent without being awarded legal custody of the juvenile by a court shall direct that the review hearing required by G.S. 7B-906 be held within six months of the date of the juvenile's placement in custody and, if practicable, shall set the date and time for the review hearing.

(c) Any order directing placement of a juvenile in foster care shall also contain:

- (1) A finding that the juvenile's continuation in or return to the juvenile's home would be contrary to the juvenile's best interests; and
- (2) Findings as to whether reasonable efforts have been made to prevent or eliminate the need for placement of the juvenile in foster care. A finding that reasonable efforts were not made shall not preclude entry of a dispositional order authorizing placement in foster care when the court finds that such placement is needed for protection of the juvenile. When efforts to prevent the need for the juvenile's placement are precluded by an immediate threat of harm to the juvenile, the court may find that placement of the juvenile in the absence of such efforts is reasonable.

The order may provide for services or other efforts aimed at returning the juvenile promptly to a safe home. If the court finds through written findings of fact that efforts to eliminate the need for placement of the juvenile in custody clearly would be futile or would be inconsistent with the juvenile's

safety and need for a safe, permanent home within a reasonable period of time, the court shall specify in its order that reunification efforts are not required or order that reunification efforts cease.

(d) An order that places a juvenile in the custody of a county department of social services for placement shall specify that the juvenile's placement and care are the responsibility of the county department of social services and that the county department is to provide or arrange for the foster care or other placement of the juvenile.

"§ 7B-906. Review of custody order.

(a) In any case where custody is removed from a parent or other person who has assumed the status and obligation of a parent without being awarded legal custody of the juvenile by a court, the court shall conduct a review within six months of the date the order was entered, shall conduct a second review within six months after the first review, and shall conduct subsequent reviews at least every year thereafter. The Director of Social Services shall make timely requests to the clerk to calendar the case at a session of court scheduled for the hearing of juvenile matters within six months of the date the order was entered. The director shall make timely requests for calendaring subsequent reviews. The clerk shall give 15 days' notice of the review to the parent or other person who has assumed the status and obligation of a parent without being awarded legal custody of the juvenile by a court, the juvenile, if 12 years of age or more, the guardian, foster parent, custodian, or agency with custody, the guardian ad litem, and any other person the court may specify, indicating the court's impending review.

(b) Notwithstanding other provisions of this Article, the court may waive the holding of review hearings required by subsection (a) of this section, may require written reports to the court by the agency or person holding custody in lieu of review hearings, or order that review hearings be held less often than every 12 months, if the court finds by clear, cogent, and convincing evidence that:

- (1) The juvenile has resided with a relative or has been in the custody of another suitable person for a period of at least one year;
- (2) The placement is stable and continuation of the placement is in the juvenile's best interests;
- (3) Neither the juvenile's best interests nor the rights of any party require that review hearings be held every 12 months;
- (4) All parties are aware that the matter may be brought before the court for review at any time by the filing of a motion for review or on the court's own motion; and
- (5) The court order has designated the relative or other suitable person as the juvenile's permanent caretaker or guardian of the person.

The court may not waive or refuse to conduct a review hearing if a party files a motion seeking the review.

(c) At every review hearing, the court shall consider information from the department of social services, the juvenile, the parent or other person who has assumed the status and obligation of a parent without being awarded legal custody of the juvenile by a court, the custodian, the foster parent, the

guardian ad litem, and any public or private agency which will aid it in its review.

In each case the court shall consider the following criteria and make written findings regarding those that are relevant:

- (1) Services which have been offered to reunite the family, or whether efforts to reunite the family clearly would be futile or inconsistent with the juvenile's safety and need for a safe, permanent home within a reasonable period of time.
- (2) Where the juvenile's return home is unlikely, the efforts which have been made to evaluate or plan for other methods of care.
- (3) Goals of the foster care placement and the appropriateness of the foster care plan.
- (4) A new foster care plan, if continuation of care is sought, that addresses the role the current foster parent will play in the planning for the juvenile.
- (5) Reports on the placements the juvenile has had and any services offered to the juvenile and the parent.
- (6) When and if termination of parental rights should be considered.
- (7) Any other criteria the court deems necessary.

(d) The court, after making findings of fact, may appoint a guardian of the person for the juvenile pursuant to G.S. 7B-600 or may make any disposition authorized by G.S. 7B-903, including the authority to place the juvenile in the custody of either parent or any relative found by the court to be suitable and found by the court to be in the best interests of the juvenile. If the juvenile is placed in or remains in the custody of the department of social services, the court may authorize the department to arrange and supervise a visitation plan. Except for such visitation, the juvenile shall not be returned to the parent or other person who has assumed the status and obligation of a parent without being awarded legal custody of the juvenile by a court without a hearing at which the court finds sufficient facts to show that the juvenile will receive proper care and supervision. The court may enter an order continuing the placement under review or providing for a different placement as is deemed to be in the best interests of the juvenile. If at any time custody is restored to a parent, the court shall be relieved of the duty to conduct periodic judicial reviews of the placement.

(e) At a hearing designated by the court, but at least within 12 months after the juvenile's placement, a review hearing shall be held under this section and designated as a permanency-planning hearing. The purpose of the hearing shall be to develop a plan to achieve a safe, permanent home for the juvenile within a reasonable period of time. Notice of the hearing shall inform the parties of the purpose of the hearing. At the conclusion of the hearing, if the juvenile is not returned home, the court shall make specific findings as to the best plan of care to achieve a safe, permanent home for the juvenile within a reasonable period of time and shall enter an order consistent with those findings.

(f) The provisions of subsections (b), (c), and (d) of G.S. 7B-905 shall apply to any order entered under this section which continues the foster care placement of a juvenile.

"§ 7B-907. Posttermination of parental rights' placement court review.

(a) The purpose of each placement review is to ensure that every reasonable effort is being made to provide for a permanent placement plan for the juvenile who has been placed in the custody of a county director or licensed child-placing agency, which is consistent with the juvenile's best interests. At each review hearing the court may consider information from the department of social services, the licensed child-placing agency, the guardian ad litem, the juvenile, the foster parent, and any other person or agency the court determines is likely to aid in the review.

(b) The court shall conduct a placement review not later than six months from the date of the termination hearing when parental rights have been terminated by a petition brought by any person or agency designated in G.S. 7B-1102(2) through (5) and a county director or licensed child-placing agency has custody of the juvenile. The court shall conduct reviews every six months until the juvenile is placed for adoption and the adoption petition is filed by the adoptive parents:

(1) No more than 30 days and no less than 15 days prior to each review, the clerk shall give notice of the review to the juvenile if the juvenile is at least 12 years of age, the legal custodian of the juvenile, the foster parent, the guardian ad litem, if any, and any other person the court may specify. Only the juvenile, if the juvenile is at least 12 years of age, the legal custodian of the juvenile, the foster parent, and the guardian ad litem shall attend the review hearings, except as otherwise directed by the court.

(2) If a guardian ad litem for the juvenile has not been appointed previously by the court in the termination proceeding, the court, at the initial six-month review hearing, may appoint a guardian ad litem to represent the juvenile. The court may continue the case for such time as is necessary for the guardian ad litem to become familiar with the facts of the case.

(c) The court shall consider at least the following in its review:

(1) The adequacy of the plan developed by the county department of social services or a licensed child-placing agency for a permanent placement relative to the juvenile's best interests and the efforts of the department or agency to implement such plan;

(2) Whether the juvenile has been listed for adoptive placement with the North Carolina Adoption Resource Exchange, the North Carolina Photo Adoption Listing Service (PALS), or any other specialized adoption agency; and

(3) The efforts previously made by the department or agency to find a permanent home for the juvenile.

(d) The court, after making findings of fact, shall affirm the county department's or child-placing agency's plans or require specific additional steps which are necessary to accomplish a permanent placement which is in the best interests of the juvenile.

(e) If the juvenile has been placed for adoption prior to the date scheduled for the review, written notice of said placement shall be given to the clerk to be placed in the court file, and the review hearing shall be cancelled with notice of said cancellation given by the clerk to all persons previously notified.

(f) The process of selection of specific adoptive parents shall be the responsibility of and within the discretion of the county department of social services or licensed child-placing agency. The guardian ad litem may request information from and consult with the county department or child-placing agency concerning the selection process. If the guardian ad litem requests information about the selection process, the county shall provide the information within five days. Any issue of abuse of discretion by the county department or child-placing agency in the selection process must be raised by the guardian ad litem within 10 days following the date the agency notifies the court and the guardian ad litem in writing of the filing of the adoption petition.

"§ 7B-908. Review of agency's plan for placement.

(a) The director of social services or the director of the licensed private child-placing agency shall promptly notify the clerk to calendar the case for review of the department's or agency's plan for the juvenile at a session of court scheduled for the hearing of juvenile matters in any case where:

- (1) One parent has surrendered a juvenile for adoption under the provisions of Part 7 of Article 3 of Chapter 48 of the General Statutes and the termination of parental rights proceedings have not been instituted against the nonsurrendering parent within six months of the surrender by the other parent, or
- (2) Both parents have surrendered a juvenile for adoption under the provisions of Part 7 of Article 3 of Chapter 48 of the General Statutes and that juvenile has not been placed for adoption within six months from the date of the more recent parental surrender.

(b) In any case where an adoption is dismissed or withdrawn and the juvenile returns to foster care with a department of social services or a licensed private child-placing agency, then the department of social services or licensed child-placing agency shall notify the clerk, within 30 days from the date the juvenile returns to care, to calendar the case for review of the agency's plan for the juvenile at a session of court scheduled for the hearing of juvenile matters.

(c) Notification of the court required under subsection (a) or (b) of this section shall be by a petition for review. The petition shall set forth the circumstances necessitating the review under subsection (a) or (b) of this section. The review shall be conducted within 30 days following the filing of the petition for review unless the court shall otherwise direct. The court shall conduct reviews every six months until the juvenile is placed for adoption and the adoption petition is filed by the adoptive parents. The initial review and all subsequent reviews shall be conducted pursuant to G.S. 7B-907.

"§ 7B-909. Review of voluntary foster care placements.

(a) The court shall review the placement of any juvenile in foster care made pursuant to a voluntary agreement between the juvenile's parents or guardian and a county department of social services and shall make findings from evidence presented at a review hearing with regard to:

- (1) The voluntariness of the placement;
- (2) The appropriateness of the placement;
- (3) Whether the placement is in the best interests of the juvenile; and

- (4) The services that have been or should be provided to the parents, guardian, foster parents, and juvenile, as the case may be, either (i) to improve the placement or (ii) to eliminate the need for the placement.

(b) The court may approve the continued placement of the juvenile in foster care on a voluntary agreement basis, disapprove the continuation of the voluntary placement, or direct the department of social services to petition the court for legal custody if the placement is to continue.

(c) An initial review hearing shall be held not more than 180 days after the juvenile's placement and shall be calendared by the clerk for hearing within such period upon timely request by the director of social services. Additional review hearings shall be held at such times as the court shall deem appropriate and shall direct, either upon its own motion or upon written request of the parents, guardian, foster parents, or director of social services. A juvenile placed under a voluntary agreement between the juvenile's parent or guardian and the county department of social services shall not remain in placement more than 12 months without the filing of a petition alleging abuse, neglect, or dependency.

(d) The clerk shall give at least 15 days' advance written notice of the initial and subsequent review hearings to the parents or guardian of the juvenile, to the juvenile if 12 or more years of age, to the director of social services, and to any other persons whom the court may specify.

"ARTICLE 10.

"Modification and Enforcement of Dispositional Orders; Appeals.

"§ 7B-1000. Authority to modify or vacate.

(a) Upon motion in the cause or petition, and after notice, the court may conduct a review hearing to determine whether the order of the court is in the best interests of the juvenile, and the court may modify or vacate the order in light of changes in circumstances or the needs of the juvenile.

(b) In any case where the court finds the juvenile to be abused, neglected, or dependent, the jurisdiction of the court to modify any order or disposition made in the case shall continue during the minority of the juvenile, until terminated by order of the court, or until the juvenile is otherwise emancipated.

"§ 7B-1001. Right to appeal.

Upon motion of a proper party as defined in G.S. 7B-1002, review of any final order of the court in a juvenile matter under this Article shall be before the Court of Appeals. Notice of appeal shall be given in open court at the time of the hearing or in writing within 10 days after entry of the order. However, if no disposition is made within 60 days after entry of the order, written notice of appeal may be given within 70 days after such entry. A final order shall include:

- (1) Any order finding absence of jurisdiction;
- (2) Any order which in effect determines the action and prevents a judgment from which appeal might be taken;
- (3) Any order of disposition after an adjudication that a juvenile is abused, neglected, or dependent; or
- (4) Any order modifying custodial rights.

"§ 7B-1002. Proper parties for appeal.

An appeal may be taken by the guardian ad litem or juvenile, the juvenile's parent, guardian, or custodian, the State or county agency.

"§ 7B-1003. Disposition pending appeal.

Pending disposition of an appeal, the return of the juvenile to the custody of the parent or guardian of the juvenile, with or without conditions, should issue in every case unless the court orders otherwise. For compelling reasons which must be stated in writing, the court may enter a temporary order affecting the custody or placement of the juvenile as the court finds to be in the best interests of the juvenile or the State. The provisions of subsections (b), (c), and (d) of G.S. 7B-905 shall apply to any order entered under this section which provides for the placement or continued placement of a juvenile in foster care.

"§ 7B-1004. Disposition after appeal.

Upon the affirmation of the order of adjudication or disposition of the court by the Court of Appeals or by the Supreme Court in the event of an appeal, the court shall have authority to modify or alter the original order of adjudication or disposition as the court finds to be in the best interests of the juvenile to reflect any adjustment made by the juvenile or change in circumstances during the period of time the appeal was pending. If the modifying order is entered ex parte, the court shall give notice to interested parties to show cause within 10 days thereafter as to why the modifying order should be vacated or altered.

"ARTICLE 11.

"Termination of Parental Rights.

"§ 7B-1100. Legislative intent; construction of Article.

The General Assembly hereby declares as a matter of legislative policy with respect to termination of parental rights:

- (1) The general purpose of this Article is to provide judicial procedures for terminating the legal relationship between a juvenile and the juvenile's biological or legal parents when the parents have demonstrated that they will not provide the degree of care which promotes the healthy and orderly physical and emotional well-being of the juvenile.
- (2) It is the further purpose of this Article to recognize the necessity for any juvenile to have a permanent plan of care at the earliest possible age, while at the same time recognizing the need to protect all juveniles from the unnecessary severance of a relationship with biological or legal parents.
- (3) Action which is in the best interests of the juvenile should be taken in all cases where the interests of the juvenile and those of the juvenile's parents or other persons are in conflict.
- (4) This Article shall not be used to circumvent the provisions of Chapter 50A of the General Statutes, the Uniform Child Custody Jurisdiction Act.

"§ 7B-1101. Jurisdiction.

The court shall have exclusive original jurisdiction to hear and determine any petition relating to termination of parental rights to any juvenile who resides in, is found in, or is in the legal or actual custody of a county department of social services or licensed child-placing agency in the district

at the time of filing of the petition. The court shall have jurisdiction to terminate the parental rights of any parent irrespective of the age of the parent. The parent has the right to counsel and to appointed counsel in cases of indigency unless the parent waives the right. The fees of appointed counsel shall be borne by the Administrative Office of the Courts. In addition to the right to appointed counsel set forth above, a guardian ad litem shall be appointed in accordance with the provisions of G.S. 1A-1, Rule 17, to represent a parent in the following cases:

- (1) Where it is alleged that a parent's rights should be terminated pursuant to G.S. 7B-1110(6); or
- (2) Where the parent is under the age of 18 years.

The fees of the guardian ad litem shall be borne by the Administrative Office of the Courts when the court finds that the respondent is indigent. In other cases the fees of the court-appointed guardian ad litem shall be a proper charge against the respondent if the respondent does not secure private legal counsel. Provided, that before exercising jurisdiction under this Article, the court shall find that it would have jurisdiction to make a child-custody determination under the provisions of G.S. 50A-3. Provided, further, that the clerk of superior court shall have jurisdiction for adoptions under the provisions of G.S. 48-2-100 and Chapter 48 of the General Statutes generally.

"§ 7B-1102. Who may petition.

A petition to terminate the parental rights of either or both parents to his, her, or their minor juvenile may only be filed by:

- (1) Either parent seeking termination of the right of the other parent; or
- (2) Any person who has been judicially appointed as the guardian of the person of the juvenile; or
- (3) Any county department of social services, consolidated county human services agency, or licensed child-placing agency to whom custody of the juvenile has been given by a court of competent jurisdiction; or
- (4) Any county department of social services, consolidated county human services agency, or licensed child-placing agency to which the juvenile has been surrendered for adoption by one of the parents or by the guardian of the person of the juvenile, pursuant to G.S. 48-3-701; or
- (5) Any person with whom the juvenile has resided for a continuous period of two years or more next preceding the filing of the petition; or
- (6) Any guardian ad litem appointed to represent the minor juvenile pursuant to G.S. 7B-601 who has not been relieved of this responsibility and who has served in this capacity for at least one continuous year; or
- (7) Any person who has filed a petition for adoption pursuant to Chapter 48 of the General Statutes.

"§ 7B-1103. Petition.

The petition shall be verified by the petitioner and shall be entitled 'In Re (last name of juvenile)', a minor juvenile; and shall set forth such of the

following facts as are known; and with respect to the facts which are unknown the petitioner shall so state:

- (1) The name of the juvenile as it appears on the juvenile's birth certificate, the date and place of birth, and the county where the juvenile is presently residing.
- (2) The name and address of the petitioner and facts sufficient to identify the petitioner as one entitled to petition under G.S. 7B-1102.
- (3) The name and address of the parents of the juvenile. If the name or address of one or both parents is unknown to the petitioner, the petitioner shall set forth with particularity the petitioner's efforts to ascertain the identity or whereabouts of the parent or parents. The information may be contained in an affidavit attached to the petition and incorporated therein by reference.
- (4) The name and address of any person appointed as guardian of the person of the juvenile pursuant to the provisions of Chapter 35A of the General Statutes, or of G.S. 7B-600.
- (5) The name and address of any person or agency to whom custody of the juvenile has been given by a court of this or any other state; and a copy of the custody order shall be attached to the petition.
- (6) Facts that are sufficient to warrant a determination that one or more of the grounds for terminating parental rights exist.
- (7) That the petition has not been filed to circumvent the provisions of Chapter 50A of the General Statutes, the Uniform Child Custody Jurisdiction Act.

"§ 7B-1104. Preliminary hearing; unknown parent.

(a) If either the name or identity of any parent whose parental rights the petitioner seeks to terminate is not known to the petitioner, the court shall, within 10 days from the date of filing of the petition, or during the next term of court in the county where the petition is filed if there is no court in the county in that 10-day period, conduct a preliminary hearing to ascertain the name or identity of such parent.

(b) The court may, in its discretion, inquire of any known parent of the juvenile concerning the identity of the unknown parent and may appoint a guardian ad litem for the unknown parent to conduct a diligent search for the parent. Should the court ascertain the name or identity of the parent, it shall enter a finding to that effect; and the parent shall be summoned to appear in accordance with G.S. 7B-1105.

(c) Notice of the preliminary hearing need be given only to the petitioner who shall appear at the hearing, but the court may cause summons to be issued to any person directing the person to appear and testify.

(d) If the court is unable to ascertain the name or identity of the unknown parent, the court shall order publication of notice of the termination proceeding and shall specifically order the place or places of publication and the contents of the notice which the court concludes is most likely to identify the juvenile to such unknown parent. The notice shall be published in a newspaper qualified for legal advertising in accordance with G.S. 1-597 and

G.S. 1-598 and published in the counties directed by the court, once a week for three successive weeks. Provided, further, the notice shall:

- (1) Designate the court in which the petition is pending;
- (2) Be directed to 'the father (mother) (father and mother) of a male (female) juvenile born on or aboutin

(date)

.....County,,

(city)

....., respondent';

(State)

- (3) Designate the docket number and title of the case (the court may direct the actual name of the title be eliminated and the words 'In Re Doe' substituted therefor);
- (4) State that a petition seeking to terminate the parental rights of the respondent has been filed;
- (5) Direct the respondent to answer the petition within 30 days after a date stated in the notice, exclusive of such date, which date so stated shall be the date of first publication of notice and be substantially in the form as set forth in G.S. 1A-1, Rule 4(j1); and
- (6) State that the respondent's parental rights to the juvenile will be terminated upon failure to answer the petition within the time prescribed.

Upon completion of the service, an affidavit of the publisher shall be filed with the court.

(e) The court shall issue the order required by subsections (b) and (d) of this section within 30 days from the date of the preliminary hearing unless the court shall determine that additional time for investigation is required.

(f) Upon the failure of the parent served by publication pursuant to subsection (d) of this section to answer the petition within the time prescribed, the court shall issue an order terminating all parental rights of the unknown parent.

"§ 7B-1105. Issuance of summons.

(a) Except as provided in G.S. 7B-1104, upon the filing of the petition, the court shall cause a summons to be issued. The summons shall be directed to the following persons or agency, not otherwise a party petitioner, who shall be named as respondents:

- (1) The parents of the juvenile;
- (2) Any person who has been judicially appointed as guardian of the person of the juvenile;
- (3) The custodian of the juvenile appointed by a court of competent jurisdiction;
- (4) Any county department of social services or licensed child-placing agency to whom a juvenile has been released by one parent pursuant to Part 7 of Article 3 of Chapter 48 of the General Statutes; and
- (5) The juvenile, if the juvenile is 12 years of age or older at the time the petition is filed.

Provided, no summons need be directed to or served upon any parent who has previously surrendered the juvenile to a county department of social services or licensed child-placing agency nor to any parent who has consented to the adoption of the juvenile by the petitioner. The summons shall notify the respondents to file a written answer within 30 days after service of the summons and petition. Service of the summons shall be completed as provided under the procedures established by G.S. 1A-1, Rule 4(j); but the parent of the juvenile shall not be deemed to be under disability even though the parent is a minor.

(b) The summons shall be issued for the purpose of terminating parental rights pursuant to the provisions of subsection (a) of this section and shall include:

- (1) The name of the minor juvenile;
- (2) Notice that a written answer to the petition must be filed with the clerk who signed the petition within 30 days after service of the summons and a copy of the petition, or the parent's rights may be terminated;
- (3) Notice that if they are indigent, the parents are entitled to appointed counsel. The parents may contact the clerk immediately to request counsel;
- (4) Notice that this is a new case. Any attorney appointed previously will not represent the parents in this proceeding unless ordered by the court;
- (5) Notice that the date, time, and place of the hearing will be mailed by the clerk upon filing of the answer or 30 days from the date of service if no answer is filed; and
- (6) Notice of the purpose of the hearing and notice that the parents may attend the termination hearing.

"§ 7B-1106. Failure of respondents to answer.

Upon the failure of the respondents to file written answer to the petition with the court within 30 days after service of the summons and petition, or within the time period established for a defendant's reply by G.S. 1A-1, Rule 4(j) if service is by publication, the court shall issue an order terminating all parental and custodial rights of the respondent or respondents with respect to the juvenile; provided the court shall order a hearing on the petition and may examine the petitioner or others on the facts alleged in the petition.

"§ 7B-1107. Answer of respondents.

(a) Any respondent may file a written answer to the petition. The answer shall admit or deny the allegations of the petition and shall set forth the name and address of the answering respondent or the respondent's attorney.

(b) If an answer denies any material allegation of the petition, the court shall appoint a guardian ad litem for the juvenile to represent the best interests of the juvenile, unless the petition was filed by the guardian ad litem pursuant to G.S. 7B-1102. A licensed attorney shall be appointed to assist those guardians ad litem who are not attorneys licensed to practice in North Carolina. The appointment, duties, and payment of the guardian ad litem shall be the same as in G.S. 7B-601 and G.S. 7B-603. The court shall conduct a special hearing after notice of not less than 10 days nor more than

30 days to the petitioner, the answering respondent, and the guardian ad litem for the juvenile to determine the issues raised by the petition and answer. Notice of the hearing shall be deemed to have been given upon the depositing thereof in the United States mail, first-class postage prepaid, and addressed to the petitioner, respondent, and guardian ad litem or their counsel of record, at the addresses appearing in the petition and responsive pleading.

(c) In proceedings under this Article, the appointment of a guardian ad litem shall not be required except, as provided above, in cases in which an answer is filed denying material allegations, or as required under G.S. 7B-1101; but the court may, in its discretion, appoint a guardian ad litem for a juvenile, either before or after determining the existence of grounds for termination of parental rights, in order to assist the court in determining the best interests of the juvenile.

(d) If a guardian ad litem has previously been appointed for the juvenile under G.S. 7B-601, and the appointment of a guardian ad litem could also be made under this section, the guardian ad litem appointed under G.S. 7B-601, and any attorney appointed to assist that guardian, shall also represent the juvenile in all proceedings under this Article and shall have the duties and payment of a guardian ad litem appointed under this section, unless the court determines that the best interests of the juvenile require otherwise.

"§ 7B-1108. Adjudicatory hearing on termination.

(a) The hearing on the termination of parental rights shall be conducted by the court sitting without a jury. Reporting of the hearing shall be as provided by G.S. 7A-198 for reporting civil trials.

(b) The court shall inquire whether the juvenile's parents are present at the hearing and, if so, whether they are represented by counsel. If the parents are not represented by counsel, the court shall inquire whether the parents desire counsel but are indigent. In the event that the parents desire counsel but are indigent as defined in G.S. 7A-450(a) and are unable to obtain counsel to represent them, the court shall appoint counsel to represent them. The court shall grant the parents such an extension of time as is reasonable to permit their appointed counsel to prepare their defense to the termination petition. In the event that the parents do not desire counsel and are present at the hearing, the court shall examine each parent and make findings of fact sufficient to show that the waivers were knowing and voluntary. This examination shall be reported as provided in G.S. 7A-198.

(c) The court may, upon finding that reasonable cause exists, order the juvenile to be examined by a psychiatrist, a licensed clinical psychologist, a physician, a public or private agency, or any other expert in order that the juvenile's psychological or physical condition or needs may be ascertained or, in the case of a parent whose ability to care for the juvenile is at issue, the court may order a similar examination of any parent of the juvenile.

(d) The court may for good cause shown continue the hearing for such time as is required for receiving additional evidence, any reports or assessments which the court has requested, or any other information needed in the best interests of the juvenile.

(e) The court shall take evidence, find the facts, and shall adjudicate the existence or nonexistence of any of the circumstances set forth in G.S. 7B-1110 which authorize the termination of parental rights of the respondent.

(f) The burden in such proceedings shall be upon the petitioner and all findings of fact shall be based on clear, cogent, and convincing evidence. No husband-wife or physician-patient privilege shall be grounds for excluding any evidence regarding the existence or nonexistence of any circumstance authorizing the termination of parental rights.

"§ 7B-1109. Disposition.

(a) Should the court determine that any one or more of the conditions authorizing a termination of the parental rights of a parent exist, the court shall issue an order terminating the parental rights of such parent with respect to the juvenile unless the court shall further determine that the best interests of the juvenile require that the parental rights of the parent not be terminated.

(b) Should the court conclude that, irrespective of the existence of one or more circumstances authorizing termination of parental rights, the best interests of the juvenile require that rights should not be terminated, the court shall dismiss the petition, but only after setting forth the facts and conclusions upon which the dismissal is based.

(c) Should the court determine that circumstances authorizing termination of parental rights do not exist, the court shall dismiss the petition, making appropriate findings of fact and conclusions.

(d) Counsel for the petitioner shall serve a copy of the termination of parental rights order upon the guardian ad litem for the juvenile, if any, and upon the juvenile if the juvenile is 12 years of age or older.

(e) The court may tax the cost of the proceeding to any party.

"§ 7B-1110. Grounds for terminating parental rights.

(a) The court may terminate the parental rights upon a finding of one or more of the following:

- (1) The parent has abused or neglected the juvenile. The juvenile shall be deemed to be abused or neglected if the court finds the juvenile to be an abused juvenile within the meaning of G.S. 7B-101 or a neglected juvenile within the meaning of G.S. 7B-101.
- (2) The parent has willfully left the juvenile in foster care for more than 12 months without showing to the satisfaction of the court that reasonable progress under the circumstances has been made within 12 months in correcting those conditions which led to the removal of the juvenile. Provided, however, that no parental rights shall be terminated for the sole reason that the parents are unable to care for the juvenile on account of their poverty.
- (3) The juvenile has been placed in the custody of a county department of social services, a licensed child-placing agency, a child-caring institution, or a foster home, and the parent, for a continuous period of six months next preceding the filing of the petition, has willfully failed for such period to pay a reasonable portion of the cost of care for the juvenile although physically and financially able to do so.

- (4) One parent has been awarded custody of the juvenile by judicial decree or has custody by agreement of the parents, and the other parent whose parental rights are sought to be terminated has for a period of one year or more next preceding the filing of the petition willfully failed without justification to pay for the care, support, and education of the juvenile, as required by said decree or custody agreement.
- (5) The father of a juvenile born out of wedlock has not, prior to the filing of a petition to terminate parental rights:
- a. Established paternity judicially or by affidavit which has been filed in a central registry maintained by the Department of Health and Human Services; provided, the court shall inquire of the Department of Health and Human Services as to whether such an affidavit has been so filed and shall incorporate into the case record the Department's certified reply; or
 - b. Legitimated the juvenile pursuant to provisions of G.S. 49-10 or filed a petition for this specific purpose; or
 - c. Legitimated the juvenile by marriage to the mother of the juvenile; or
 - d. Provided substantial financial support or consistent care with respect to the juvenile and mother.
- (6) That the parent is incapable of providing for the proper care and supervision of the juvenile, such that the juvenile is a dependent juvenile within the meaning of G.S. 7B-101, and that there is a reasonable probability that such incapability will continue for the foreseeable future. Incapability under this subdivision may be the result of substance abuse, mental retardation, mental illness, organic brain syndrome, or any other similar cause or condition.
- (7) The parent has willfully abandoned the juvenile for at least six consecutive months immediately preceding the filing of the petition. For the purpose of this subdivision, a juvenile may be willfully abandoned by the juvenile's natural father if the mother of the juvenile had been willfully abandoned by and was living separate and apart from the father at the time of the juvenile's birth, although the father may not have known of such birth; but in any event the juvenile must be over the age of three months at the time of the filing of the petition.
- (b) The burden in such proceedings shall be upon the petitioner to prove the facts justifying such termination by clear and convincing evidence.
- "§ 7B-1111. Effects of termination order.
- An order terminating the parental rights completely and permanently terminates all rights and obligations of the parent to the juvenile and of the juvenile to the parent arising from the parental relationship, except that the juvenile's right of inheritance from the juvenile's parent shall not terminate until a final order of adoption is issued. The parent is not thereafter entitled to notice of proceedings to adopt the juvenile and may not object thereto or otherwise participate therein:

- (1) If the juvenile had been placed in the custody of or released for adoption by one parent to a county department of social services or licensed child-placing agency and is in the custody of the agency at the time of the filing of the petition, including a petition filed pursuant to G.S. 7B-1102(6), that agency shall, upon entry of the order terminating parental rights, acquire all of the rights for placement of the juvenile as the agency would have acquired had the parent whose rights are terminated released the juvenile to that agency pursuant to the provisions of Part 7 of Article 3 of Chapter 48 of the General Statutes, including the right to consent to the adoption of the juvenile.
- (2) Except as provided in subdivision (1) above, upon entering an order terminating the parental rights of one or both parents, the court may place the juvenile in the custody of the petitioner, or some other suitable person, or in the custody of the department of social services or licensed child-placing agency, as may appear to be in the best interests of the juvenile.

"§ 7B-1112. Appeals; modification of order after affirmation.

Any juvenile, parent, guardian, custodian, or agency who is a party to a proceeding under this Article may appeal from an adjudication or any order of disposition to the Court of Appeals, provided that notice of appeal is given in open court at the time of the hearing or in writing within 10 days after the hearing. Pending disposition of an appeal, the court may enter a temporary order affecting the custody or placement of the juvenile as the court finds to be in the best interests of the juvenile or the best interests of the State. Upon the affirmation of the order of adjudication or disposition of the court in a juvenile case by the Court of Appeals, or by the Supreme Court in the event of an appeal, the court shall have authority to modify or alter its original order of adjudication or disposition as the court finds to be in the best interests of the juvenile to reflect any adjustment made by the juvenile or change in circumstances during the period of time the case on appeal was pending, provided that if the modifying order be entered ex parte, the court shall give notice to interested parties to show cause, if any there be, within 10 days thereafter, as to why the modifying order should be vacated or altered.

"ARTICLE 12.

"Guardian ad Litem Program.

"§ 7B-1200. Office of Guardian ad Litem Services established.

There is established within the Administrative Office of the Courts an Office of Guardian ad Litem Services to provide services in accordance with G.S. 7B-601 to abused, neglected, or dependent juveniles involved in judicial proceedings and to assure that all participants in these proceedings are adequately trained to carry out their responsibilities. Each local program shall consist of volunteer guardians ad litem, at least one program attorney, a program coordinator who is a paid State employee, and any clerical staff as the Administrative Office of the Courts in consultation with the local program deems necessary. The Administrative Office of the Courts shall adopt rules and regulations necessary and appropriate for the administration of the program.

"§ 7B-1201. Implementation and administration.

(a) Local Programs. -- The Administrative Office of the Courts shall, in cooperation with each chief district court judge and other personnel in the district, implement and administer the program mandated by this Article. Where a local program has not yet been established in accordance with this Article, the district court district shall operate a guardian ad litem program approved by the Administrative Office of the Courts.

(b) Advisory Committee Established. -- The Director of the Administrative Office of the Courts shall appoint a Guardian ad Litem Advisory Committee consisting of at least five members to advise the Office of Guardian ad Litem Services in matters related to this program. The members of the Advisory Committee shall receive the same per diem and reimbursement for travel expenses as members of State boards and commissions generally.

"§ 7B-1202. Conflict of interest or impracticality of implementation.

If a conflict of interest prohibits a local program from providing representation to an abused, neglected, or dependent juvenile, the court may appoint any member of the district bar to represent the juvenile. If the Administrative Office of the Courts determines that within a particular district court district the implementation of a local program is impractical, or that an alternative plan meets the conditions of G.S. 7B-1203, the Administrative Office of the Courts shall waive the establishment of the program within the district.

"§ 7B-1203. Alternative plans.

A district court district shall be granted a waiver from the implementation of a local program if the Administrative Office of the Courts determines that the following conditions are met:

- (1) An alternative plan has been developed to provide adequate guardian ad litem services for every juvenile consistent with the duties stated in G.S. 7B-601; and
- (2) The proposed alternative plan will require no greater proportion of State funds than the district court district's abuse and neglect caseload represents to the State's abuse and neglect caseload. Computation of abuse and neglect caseloads shall include such factors as the juvenile population, number of substantiated abuse and neglect reports, number of abuse and neglect petitions, number of abused and neglected juveniles in care to be reviewed pursuant to G.S. 7B-906, nature of the district's district court caseload, and number of petitions to terminate parental rights.

When an alternative plan is approved pursuant to this section, the Administrative Office of the Courts shall retain authority to monitor implementation of the said plan in order to assure compliance with the requirements of this Article and G.S. 7B-601. In any district court district where the Administrative Office of the Courts determines that implementation of an alternative plan is not in compliance with the requirements of this section, the Administrative Office of the Courts may implement and administer a program authorized by this Article.

"§ 7B-1204. Civil liability of volunteers.

Any volunteer participating in a judicial proceeding pursuant to the program authorized by this Article shall not be civilly liable for acts or

omissions committed in connection with the proceeding if the volunteer acted in good faith and was not guilty of gross negligence.

"ARTICLE 13.

"Prevention of Abuse and Neglect.

"§ 7B-1300. Purpose.

It is the expressed intent of this Article to make the prevention of abuse and neglect, as defined in G.S. 7B-101, a priority of this State and to establish the Children's Trust Fund as a means to that end.

"§ 7B-1301. Program on Prevention of Abuse and Neglect.

(a) The State Board of Education, through the Department of Public Instruction, shall implement the Program on Prevention of Abuse and Neglect. The Department of Public Instruction, subject to the approval of the State Board of Education, shall provide the staff and support services for implementing this program.

(b) In order to carry out the purposes of this Article:

- (1) The Department of Public Instruction shall review applications and make recommendations to the State Board of Education concerning the awarding of contracts under this Article.
- (2) The State Board of Education shall contract with public or private nonprofit organizations, agencies, schools, or with qualified individuals to operate community-based educational and service programs designed to prevent the occurrence of abuse and neglect. Every contract entered into by the State Board of Education shall contain provisions that at least twenty-five percent (25%) of the total funding required for a program be provided by the administering organization in the form of in-kind or other services and that a mechanism for evaluation of services provided under the contract be included in the services to be performed. In addition, every proposal to the Department of Public Instruction for funding under this Article shall include assurances that the proposal has been forwarded to the local department of social services for comment so that the Department of Public Instruction may consider coordination and duplication of effort on the local level as criteria in making recommendations to the State Board of Education.
- (3) The State Board of Education, with the assistance of the Department of Public Instruction, shall develop appropriate guidelines and criteria for awarding contracts under this Article. These criteria shall include, but are not limited to: documentation of need within the proposed geographical impact area; diversity of geographical areas of programs funded under this Article; demonstrated effectiveness of the proposed strategy or program for preventing abuse and neglect; reasonableness of implementation plan for achieving stated objectives; utilization of community resources including volunteers; provision for an evaluation component that will provide outcome data; plan for dissemination of the program for implementation in other communities; and potential for future funding from private sources.

- (4) The State Board of Education, with the assistance of the Department of Public Instruction, shall develop guidelines for regular monitoring of contracts awarded under this Article in order to maximize the investments in prevention programs by the Children's Trust Fund and to establish appropriate accountability measures for administration of contracts.
- (5) The State Board of Education shall develop a State plan for the prevention of abuse and neglect for submission to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

(c) To assist in implementing this Article, the State Board of Education may accept contributions, grants, or gifts in cash or otherwise from persons, associations, or corporations. All monies received by the State Board of Education from contributions, grants, or gifts and not through appropriation by the General Assembly shall be deposited in the Children's Trust Fund. Disbursements of the funds shall be on the authorization of the State Board of Education or that Board's duly authorized representative. In order to maintain an effective expenditure and revenue control, the funds are subject in all respects to State law and regulations, but no appropriation is required to permit expenditure of the funds.

(d) Programs contracted for under this Article are intended to prevent abuse and neglect of juveniles. Abuse and neglect prevention programs are defined to be those programs and services which impact on juveniles and families before any substantiated incident of abuse or neglect has occurred. These programs may include, but are not limited to:

- (1) Community-based educational programs on prenatal care, perinatal bonding, child development, basic child care, care of children with special needs, and coping with family stress; and
- (2) Community-based programs relating to crisis care, aid to parents, and support groups for parents and their children experiencing stress within the family unit.

(e) No more than twenty percent (20%) of each year's total awards may be utilized for funding State-level programs to coordinate community-based programs.

"§ 7B-1302. Children's Trust Fund.

There is established a fund to be known as the 'Children's Trust Fund,' in the Department of State Treasurer, which shall be funded pursuant to G.S. 161-11.1, and which shall be used by the State Board of Education to fund abuse and neglect prevention programs so authorized by this Article.

"ARTICLE 14.

"North Carolina Child Fatality Prevention System.

"§ 7B-1400. Declaration of public policy.

The General Assembly finds that it is the public policy of this State to prevent the abuse, neglect, and death of juveniles. The General Assembly further finds that the prevention of the abuse, neglect, and death of juveniles is a community responsibility; that professionals from disparate disciplines have responsibilities for children or juveniles and have expertise that can promote their safety and well-being; and that multidisciplinary reviews of the abuse, neglect, and death of juveniles can lead to a greater understanding of

the causes and methods of preventing these deaths. It is, therefore, the intent of the General Assembly, through this Article, to establish a statewide multidisciplinary, multiagency child fatality prevention system consisting of the State Team established in G.S. 7B-1404 and the Local Teams established in G.S. 7B-1406. The purpose of the system is to assess the records of selected cases in which children are being served by child protective services and the records of all deaths of children in North Carolina from birth to age 18 in order to (i) develop a communitywide approach to the problem of child abuse and neglect, (ii) understand the causes of childhood deaths, (iii) identify any gaps or deficiencies that may exist in the delivery of services to children and their families by public agencies that are designed to prevent future child abuse, neglect, or death, and (iv) make and implement recommendations for changes to laws, rules, and policies that will support the safe and healthy development of our children and prevent future child abuse, neglect, and death.

"§ 7B-1401. Definitions.

The following definitions apply in this Article:

- (1) Additional Child Fatality. -- Any death of a child that did not result from suspected abuse or neglect and about which no report of abuse or neglect had been made to the county department of social services within the previous 12 months.
- (2) Local Team. -- A Community Child Protection Team or a Child Fatality Prevention Team.
- (3) State Team. -- The North Carolina Child Fatality Prevention Team.
- (4) Task Force. -- The North Carolina Child Fatality Task Force.
- (5) Team Coordinator. -- The Child Fatality Prevention Team Coordinator.

"§ 7B-1402. Task Force -- creation; membership; vacancies.

(a) There is created the North Carolina Child Fatality Task Force within the Department of Health and Human Services for budgetary purposes only.

(b) The Task Force shall be composed of 35 members, 11 of whom shall be ex officio members, four of whom shall be appointed by the Governor, 10 of whom shall be appointed by the Speaker of the House of Representatives, and 10 of whom shall be appointed by the President Pro Tempore of the Senate. The ex officio members other than the Chief Medical Examiner shall be nonvoting members and may designate representatives from their particular departments, divisions, or offices to represent them on the Task Force. The members shall be as follows:

- (1) The Chief Medical Examiner;
- (2) The Attorney General;
- (3) The Director of the Division of Social Services;
- (4) The Director of the State Bureau of Investigation;
- (5) The Director of the Division of Maternal and Child Health of the Department of Health and Human Services;
- (6) The Director of the Governor's Youth Advocacy and Involvement Office;
- (7) The Superintendent of Public Instruction;
- (8) The Chairman of the State Board of Education;

- (9) The Director of the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services;
- (10) The Secretary of the Department of Health and Human Services;
- (11) The Director of the Administrative Office of the Courts;
- (12) A director of a county department of social services, appointed by the Governor upon recommendation of the President of the North Carolina Association of County Directors of Social Services;
- (13) A representative from a Sudden Infant Death Syndrome counseling and education program, appointed by the Governor upon recommendation of the Director of the Division of Maternal and Child Health of the Department of Health and Human Services;
- (14) A representative from the North Carolina Child Advocacy Institute, appointed by the Governor upon recommendation of the President of the Institute;
- (15) A director of a local department of health, appointed by the Governor upon the recommendation of the President of the North Carolina Association of Local Health Directors;
- (16) A representative from a private group, other than the North Carolina Child Advocacy Institute, that advocates for children, appointed by the Speaker of the House of Representatives upon recommendation of private child advocacy organizations;
- (17) A pediatrician, licensed to practice medicine in North Carolina, appointed by the Speaker of the House of Representatives upon recommendation of the North Carolina Pediatric Society;
- (18) A representative from the North Carolina League of Municipalities, appointed by the Speaker of the House of Representatives upon recommendation of the League;
- (19) Two public members, appointed by the Speaker of the House of Representatives;
- (20) A county or municipal law enforcement officer, appointed by the President Pro Tempore of the Senate upon recommendation of organizations that represent local law enforcement officers;
- (21) A district attorney, appointed by the President Pro Tempore of the Senate upon recommendation of the President of the North Carolina Conference of District Attorneys;
- (22) A representative from the North Carolina Association of County Commissioners, appointed by the President Pro Tempore of the Senate upon recommendation of the Association;
- (23) Two public members, appointed by the President Pro Tempore of the Senate; and
- (24) Five members of the Senate, appointed by the President Pro Tempore of the Senate, and five members of the House of Representatives, appointed by the Speaker of the House of Representatives.

(c) All members of the Task Force are voting members. Vacancies in the appointed membership shall be filled by the appointing officer who made the initial appointment. Terms shall be two years. The members shall elect a chair who shall preside for the duration of the chair's term as member. In

the event a vacancy occurs in the chair before the expiration of the chair's term, the members shall elect an acting chair to serve for the remainder of the unexpired term.

"§ 7B-1403. Task Force -- duties.

The Task Force shall:

- (1) Undertake a statistical study of the incidences and causes of child deaths in this State and establish a profile of child deaths. The study shall include (i) an analysis of all community and private and public agency involvement with the decedents and their families prior to death, and (ii) an analysis of child deaths by age, cause, and geographic distribution;
- (2) Develop a system for multidisciplinary review of child deaths. In developing such a system, the Task Force shall study the operation of existing Local Teams. The Task Force shall also consider the feasibility and desirability of local or regional review teams and, should it determine such teams to be feasible and desirable, develop guidelines for the operation of the teams. The Task Force shall also examine the laws, rules, and policies relating to confidentiality of and access to information that affect those agencies with responsibilities for children, including State and local health, mental health, social services, education, and law enforcement agencies, to determine whether those laws, rules, and policies inappropriately impede the exchange of information necessary to protect children from preventable deaths, and, if so, recommend changes to them;
- (3) Receive and consider reports from the State Team; and
- (4) Perform any other studies, evaluations, or determinations the Task Force considers necessary to carry out its mandate.

"§ 7B-1404. State Team -- creation; membership; vacancies.

(a) There is created the North Carolina Child Fatality Prevention Team within the Department of Health and Human Services for budgetary purposes only.

(b) The State Team shall be composed of the following 11 members of whom nine members are ex officio and two are appointed:

- (1) The Chief Medical Examiner, who shall chair the State Team;
- (2) The Attorney General;
- (3) The Director of the Division of Social Services, Department of Health and Human Services;
- (4) The Director of the State Bureau of Investigation;
- (5) The Director of the Division of Maternal and Child Health of the Department of Health and Human Services;
- (6) The Superintendent of Public Instruction;
- (7) The Director of the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, Department of Health and Human Services;
- (8) The Director of the Administrative Office of the Courts;
- (9) The pediatrician appointed pursuant to G.S. 7B-1402(b) to the Task Force;
- (10) A public member, appointed by the Governor; and

(11) The Team Coordinator.

The ex officio members other than the Chief Medical Examiner may designate a representative from their departments, divisions, or offices to represent them on the State Team.

(c) All members of the State Team are voting members. Vacancies in the appointed membership shall be filled by the appointing officer who made the initial appointment.

"§ 7B-1405. State Team -- duties.

The State Team shall:

- (1) Review current deaths of children when those deaths are attributed to child abuse or neglect or when the decedent was reported as an abused or neglected juvenile pursuant to G.S. 7B-301 at any time before death;
- (2) Report to the Task Force during the existence of the Task Force, in the format and at the time required by the Task Force, on the State Team's activities and its recommendations for changes to any law, rule, and policy that would promote the safety and well-being of children;
- (3) Upon request of a Local Team, provide technical assistance to the Team;
- (4) Periodically assess the operations of the multidisciplinary child fatality prevention system and make recommendations for changes as needed;
- (5) Work with the Team Coordinator to develop guidelines for selecting child deaths to receive detailed, multidisciplinary death reviews by Local Teams that review cases of additional child fatalities; and
- (6) Receive reports of findings and recommendations from Local Teams that review cases of additional child fatalities and work with the Team Coordinator to implement recommendations.

"§ 7B-1406. Community Child Protection Teams; Child Fatality Prevention Teams; creation and duties.

(a) Community Child Protection Teams are established in every county of the State. Each Community Child Protection Team shall:

- (1) Review, in accordance with the procedures established by the director of the county department of social services under G.S. 7B-1409:
 - a. Selected active cases in which children are being served by child protective services; and
 - b. Cases in which a child died as a result of suspected abuse or neglect, and
 1. A report of abuse or neglect has been made about the child or the child's family to the county department of social services within the previous 12 months, or
 2. The child or the child's family was a recipient of child protective services within the previous 12 months.
- (2) Submit annually to the board of county commissioners recommendations, if any, and advocate for system improvements and needed resources where gaps and deficiencies may exist.

In addition, each Community Child Protection Team may review the records of all additional child fatalities and report findings in connection with these reviews to the Team Coordinator.

(b) Any Community Child Protection Team that determines it will not review additional child fatalities shall notify the Team Coordinator. In accordance with the plan established under G.S. 7B-1408(1), a separate Child Fatality Prevention Team shall be established in that county to conduct these reviews. Each Child Fatality Prevention Team shall:

- (1) Review the records of all cases of additional child fatalities.
 - (2) Submit annually to the board of county commissioners recommendations, if any, and advocate for system improvements and needed resources where gaps and deficiencies may exist.
 - (3) Report findings in connection with these reviews to the Team Coordinator.
- (c) All reports to the Team Coordinator under this section shall include:
- (1) A listing of the system problems identified through the review process and recommendations for preventive actions;
 - (2) Any changes that resulted from the recommendations made by the Local Team;
 - (3) Information about each death reviewed; and
 - (4) Any additional information requested by the Team Coordinator.

"§ 7B-1407. Local Teams; composition.

(a) Each Local Team shall consist of representatives of public and nonpublic agencies in the community that provide services to children and their families and other individuals who represent the community. No single team shall encompass a geographic or governmental area larger than one county.

(b) Each Local Team shall consist of the following persons:

- (1) The director of the county department of social services and a member of the director's staff;
- (2) A local law enforcement officer, appointed by the board of county commissioners;
- (3) An attorney from the district attorney's office, appointed by the district attorney;
- (4) The executive director of the local community action agency, as defined by the Department of Health and Human Services, or the executive director's designee;
- (5) The superintendent of each local school administrative unit located in the county, or the superintendent's designee;
- (6) A member of the county board of social services, appointed by the chair of that board;
- (7) A local mental health professional, appointed by the director of the area authority established under Chapter 122C of the General Statutes;
- (8) The local guardian ad litem coordinator, or the coordinator's designee;
- (9) The director of the local department of public health; and
- (10) A local health care provider, appointed by the local board of health.

(c) In addition, a Local Team that reviews the records of additional child fatalities shall include the following five additional members:

- (1) An emergency medical services provider or firefighter, appointed by the board of county commissioners;
- (2) A district court judge, appointed by the chief district court judge in that district;
- (3) A county medical examiner, appointed by the Chief Medical Examiner;
- (4) A representative of a local child care facility or Head Start program, appointed by the director of the county department of social services; and
- (5) A parent of a child who died before reaching the child's eighteenth birthday, to be appointed by the board of county commissioners.

(d) The Team Coordinator shall serve as an ex officio member of each Local Team that reviews the records of additional child fatalities. The board of county commissioners may appoint a maximum of five additional members to represent county agencies or the community at large to serve on any Local Team. Vacancies on a Local Team shall be filled by the original appointing authority.

(e) Each Local Team shall elect a member to serve as chair at the Team's pleasure.

(f) Each Local Team shall meet at least four times each year.

(g) The director of the local department of social services shall call the first meeting of the Community Child Protection Team. The director of the local department of health, upon consultation with the Team Coordinator, shall call the first meeting of the Child Fatality Prevention Team. Thereafter, the chair of each Local Team shall schedule the time and place of meetings, in consultation with these directors, and shall prepare the agenda. The chair shall schedule Team meetings no less often than once per quarter and often enough to allow adequate review of the cases selected for review. Within three months of election, the chair shall participate in the appropriate training developed under this Article.

"§ 7B-1408. Child Fatality Prevention Team Coordinator; duties.

The Child Fatality Prevention Team Coordinator shall serve as liaison between the State Team and the Local Teams that review records of additional child fatalities and shall provide technical assistance to these Local Teams. The Team Coordinator shall:

- (1) Develop a plan to establish Local Teams that review the records of additional child fatalities in each county.
- (2) Develop model operating procedures for these Local Teams that address when public meetings should be held, what items should be addressed in public meetings, what information may be released in written reports, and any other information the Team Coordinator considers necessary.
- (3) Provide structured training for these Local Teams at the time of their establishment, and continuing technical assistance thereafter.

- (4) Provide statistical information on all child deaths occurring in each county to the appropriate Local Team, and assure that all child deaths in a county are assessed through the multidisciplinary system.
- (5) Monitor the work of these Local Teams.
- (6) Receive reports of findings, and other reports that the Team Coordinator may require, from these Local Teams.
- (7) Report the aggregated findings of these Local Teams to each Local Team that reviews the records of additional child fatalities and to the State Team.
- (8) Evaluate the impact of local efforts to identify problems and make changes.

"§ 7B-1409. Community Child Protection Teams; duties of the director of the county department of social services.

In addition to any other duties as a member of the Community Child Protection Team, and in connection with the reviews under G.S. 7B-1406(a)(1), the director of the county department of social services shall:

- (1) Assure the development of written operating procedures in connection with these reviews, including frequency of meetings, confidentiality policies, training of members, and duties and responsibilities of members;
- (2) Assure that the Team defines the categories of cases that are subject to its review;
- (3) Determine and initiate the cases for review;
- (4) Bring for review any case requested by a Team member;
- (5) Provide staff support for these reviews;
- (6) Maintain records, including minutes of all official meetings, lists of participants for each meeting of the Team, and signed confidentiality statements required under G.S. 7B-1413, in compliance with applicable rules and law; and
- (7) Report quarterly to the county board of social services, or as required by the board, on the activities of the Team.

"§ 7B-1410. Local Teams; duties of the director of the local department of health.

In addition to any other duties as a member of the Local Team and in connection with reviews of additional child fatalities, the director of the local department of health shall:

- (1) Distribute copies of the written procedures developed by the Team Coordinator under G.S. 7B-1408 to the administrators of all agencies represented on the Local Team and to all members of the Local Team;
- (2) Maintain records, including minutes of all official meetings, lists of participants for each meeting of the Local Team, and signed confidentiality statements required under G.S. 7B-1413, in compliance with applicable rules and law;
- (3) Provide staff support for these reviews; and
- (4) Report quarterly to the local board of health, or as required by the board, on the activities of the Local Team.

"§ 7B-1411. Community Child Protection Teams; responsibility for training of team members.

The Division of Social Services, Department of Health and Human Services, shall develop and make available, on an ongoing basis, for the members of Local Teams that review active cases in which children are being served by child protective services, training materials that address the role and function of the Local Team, confidentiality requirements, an overview of child protective services law and policy, and Team record keeping.

"§ 7B-1412. Task Force -- reports.

The Task Force shall report annually to the Governor and General Assembly, within the first week of the convening or reconvening of the General Assembly. The report shall contain at least a summary of the conclusions and recommendations for each of the Task Force's duties, as well as any other recommendations for changes to any law, rule, or policy that it has determined will promote the safety and well-being of children. Any recommendations of changes to law, rule, or policy shall be accompanied by specific legislative or policy proposals and detailed fiscal notes setting forth the costs to the State.

"§ 7B-1413. Access to records.

(a) The State Team, the Local Teams, and the Task Force during its existence, shall have access to all medical records, hospital records, and records maintained by this State, any county, or any local agency as necessary to carry out the purposes of this Article, including police investigations data, medical examiner investigative data, health records, mental health records, and social services records. The State Team, the Task Force, and the Local Teams shall not, as part of the reviews authorized under this Article, contact, question, or interview the child, the parent of the child, or any other family member of the child whose record is being reviewed. Any member of a Local Team may share, only in an official meeting of that Local Team, any information available to that member that the Local Team needs to carry out its duties.

(b) Meetings of the State Team and the Local Teams are not subject to the provisions of Article 33C of Chapter 143 of the General Statutes. However, the Local Teams may hold periodic public meetings to discuss, in a general manner not revealing confidential information about children and families, the findings of their reviews and their recommendations for preventive actions. Minutes of all public meetings, excluding those of executive sessions, shall be kept in compliance with Article 33C of Chapter 143 of the General Statutes. Any minutes or any other information generated during any closed session shall be sealed from public inspection.

(c) All otherwise confidential information and records acquired by the State Team, the Local Teams, and the Task Force during its existence, in the exercise of their duties are confidential; are not subject to discovery or introduction into evidence in any proceedings; and may only be disclosed as necessary to carry out the purposes of the State Team, the Local Teams, and the Task Force. In addition, all otherwise confidential information and records created by a Local Team in the exercise of its duties are confidential; are not subject to discovery or introduction into evidence in any

proceedings; and may only be disclosed as necessary to carry out the purposes of the Local Team. No member of the State Team, a Local Team, nor any person who attends a meeting of the State Team or a Local Team, may testify in any proceeding about what transpired at the meeting, about information presented at the meeting, or about opinions formed by the person as a result of the meetings. This subsection shall not, however, prohibit a person from testifying in a civil or criminal action about matters within that person's independent knowledge.

(d) Each member of a Local Team and invited participant shall sign a statement indicating an understanding of and adherence to confidentiality requirements, including the possible civil or criminal consequences of any breach of confidentiality.

(e) Cases receiving child protective services at the time of review by a Local Team shall have an entry in the child's protective services record to indicate that the case was received by that Team. Additional entry into the record shall be at the discretion of the director of the county department of social services.

(f) The Social Services Commission shall adopt rules to implement this section in connection with reviews conducted by Community Child Protection Teams. The Health Services Commission shall adopt rules to implement this section in connection with Local Teams that review additional child fatalities. In particular, these rules shall allow information generated by an executive session of a Local Team to be accessible for administrative or research purposes only.

"§ 7B-1414. Administration; funding.

(a) To the extent of funds available, the chairs of the Task Force and State Team may hire staff or consultants to assist the Task Force and the State Team in completing their duties.

(b) Members, staff, and consultants of the Task Force or State Team shall receive travel and subsistence expenses in accordance with the provisions of G.S. 138-5 or G.S. 138-6, as the case may be, paid from funds appropriated to implement this Article and within the limits of those funds.

(c) With the approval of the Legislative Services Commission, legislative staff and space in the Legislative Building and the Legislative Office Building may be made available to the Task Force.

"SUBCHAPTER II. UNDISCIPLINED AND DELINQUENT JUVENILES.

"ARTICLE 15.

"Purposes; Definitions.

"§ 7B-1500. Purpose.

This Subchapter shall be interpreted and construed so as to implement the following purposes and policies:

- (1) To protect the public from acts of delinquency.
- (2) To deter delinquency and crime, including patterns of repeat offending:
 - a. By providing swift, effective dispositions that emphasize the juvenile offender's accountability for the juvenile's actions;
 - and

- b. By providing appropriate rehabilitative services to juveniles and their families.
- (3) To provide an effective system of intake services for the screening and evaluation of complaints and, in appropriate cases, where court intervention is not necessary to ensure public safety, to refer juveniles to community-based resources.
- (4) To provide uniform procedures that assure fairness and equity; that protect the constitutional rights of juveniles, parents, and victims; and that encourage the court and others involved with juvenile offenders to proceed with all possible speed in making and implementing determinations required by this Subchapter.

"§ 7B-1501. Definitions.

In this Subchapter, unless the context clearly requires otherwise, the following words have the listed meanings:

- (1) Chief court counselor. -- The person responsible for administration and supervision of juvenile intake, probation, and post-release supervision in each judicial district, operating under the supervision of the Office of Juvenile Justice.
- (2) Clerk. -- Any clerk of superior court, acting clerk, or assistant or deputy clerk.
- (3) Community-based program. -- A program providing nonresidential or residential treatment to a juvenile under the jurisdiction of the juvenile court in the community where the juvenile's family lives. A community-based program may include specialized foster care, family counseling, shelter care, and other appropriate treatment.
- (4) Court. -- The district court division of the General Court of Justice.
- (5) Court counselor. -- A person responsible for probation and post-release supervision to juveniles under the supervision of the chief court counselor.
- (6) Custodian. -- The person or agency that has been awarded legal custody of a juvenile by a court.
- (7) Delinquent juvenile. -- Any juvenile who, while less than 16 years of age but at least 6 years of age, commits a crime or infraction under State law or under an ordinance of local government, including violation of the motor vehicle laws.
- (8) Detention. -- The secure confinement of a juvenile pursuant to a court order.
- (9) Detention facility. -- A facility approved to provide secure confinement and care for juveniles. Detention facilities include both State and locally administered detention homes, centers, and facilities.
- (10) District. -- Any district court district as established by G.S. 7A-133.
- (11) Holdover facility. -- A place in a jail which has been approved by the Department of Health and Human Services as meeting the State standards for detention as required in G.S. 153A-221

- providing close supervision where the juvenile cannot converse with, see, or be seen by the adult population.
- (12) House arrest. -- A requirement that the juvenile remain at the juvenile's residence unless the court or the juvenile court counselor authorizes the juvenile to leave for specific purposes.
- (13) Intake counselor. -- A person who screens and evaluates a complaint alleging that a juvenile is delinquent or undisciplined to determine whether the complaint should be filed as a petition.
- (14) Interstate Compact on Juveniles. -- An agreement ratified by 50 states and the District of Columbia providing a formal means of returning a juvenile, who is an absconder, escapee, or runaway, to the juvenile's home state, and codified in Article 28 of this Chapter.
- (15) Judge. -- Any district court judge.
- (16) Judicial district. -- Any district court district as established by G.S. 7A-133.
- (17) Juvenile. -- Except as provided in subdivisions (7) and (27) of this section, any person who has not reached the person's eighteenth birthday and is not married, emancipated, or a member of the armed forces of the United States. Wherever the term 'juvenile' is used with reference to rights and privileges, that term encompasses the attorney for the juvenile as well.
- (18) Juvenile court. -- Any district court exercising jurisdiction pursuant to this Chapter.
- (19) Office. -- The Office of Juvenile Justice.
- (20) Petitioner. -- The individual who initiates court action by the filing of a petition or a motion for review alleging the matter for adjudication.
- (21) Post-release supervision. -- The supervision of a juvenile who has been returned to the community after having been committed to the Office for placement in a training school.
- (22) Probation. -- The status of a juvenile who has been adjudicated delinquent, is subject to specified conditions under the supervision of a court counselor, and may be returned to the court for violation of those conditions during the period of probation.
- (23) Prosecutor. -- The district attorney or assistant district attorney assigned by the district attorney to juvenile proceedings.
- (24) Protective supervision. -- The status of a juvenile who has been adjudicated undisciplined and is under the supervision of a court counselor.
- (25) Teen court program. -- A community resource for the diversion of cases in which a juvenile has allegedly committed certain offenses for hearing by a jury of the juvenile's peers, which may assign the juvenile to counseling, restitution, curfews, community service, or other rehabilitative measures.
- (26) Training school. -- A secure residential facility authorized to provide long-term treatment, education, and rehabilitative services

for delinquent juveniles committed by the court to the Office of Juvenile Justice.

(27) Undisciplined juvenile. --

- a. A juvenile who, while less than 16 years of age but at least 6 years of age, is unlawfully absent from school; or is regularly disobedient to and beyond the disciplinary control of the juvenile's parent, guardian, or custodian; or is regularly found in places where it is unlawful for a juvenile to be; or has run away from home for a period of more than 24 hours; or
- b. A juvenile who is 16 or 17 years of age and who is regularly disobedient to and beyond the disciplinary control of the juvenile's parent, guardian, or custodian; or is regularly found in places where it is unlawful for a juvenile to be; or has run away from home for a period of more than 24 hours.

(28) Wilderness program. -- A rehabilitative residential treatment program in a rural or outdoor setting.

The singular includes the plural, unless otherwise specified.

"ARTICLE 16.

"Jurisdiction.

"§ 7B-1600. Jurisdiction over undisciplined juveniles.

(a) The court has exclusive, original jurisdiction over any case involving a juvenile who is alleged to be undisciplined. For purposes of determining jurisdiction, the age of the juvenile at the time of the alleged offense governs.

(b) When the court obtains jurisdiction over a juvenile under this section, jurisdiction shall continue until terminated by order of the court, the juvenile reaches the age of 18 years, or the juvenile is emancipated.

(c) The court has jurisdiction over the parent, guardian, or custodian of a juvenile who is under the jurisdiction of the court pursuant to this section, if the parent, guardian, or custodian has been served with a summons pursuant to G.S. 7B-1805.

"§ 7B-1601. Jurisdiction over delinquent juveniles.

(a) The court has exclusive, original jurisdiction over any case involving a juvenile who is alleged to be delinquent. For purposes of determining jurisdiction, the age of the juvenile at the time of the alleged offense governs.

(b) When the court obtains jurisdiction over a juvenile alleged to be delinquent, jurisdiction shall continue until terminated by order of the court or until the juvenile reaches the age of 18 years, except as provided otherwise in this Article.

(c) When delinquency proceedings cannot be concluded before the juvenile reaches the age of 18 years, the court retains jurisdiction for the sole purpose of conducting proceedings pursuant to Article 22 of this Chapter and either transferring the case to superior court for trial as an adult or dismissing the petition.

(d) When the court has not obtained jurisdiction over a juvenile before the juvenile reaches the age of 18, for a felony and any related misdemeanors the juvenile allegedly committed on or after the juvenile's

thirteenth birthday and prior to the juvenile's sixteenth birthday, the court has jurisdiction for the sole purpose of conducting proceedings pursuant to Article 22 of this Chapter and either transferring the case to superior court for trial as an adult or dismissing the petition.

(e) The court has jurisdiction over delinquent juveniles in the custody of the Office and over proceedings to determine whether a juvenile who is under the post-release supervision of the court counselor has violated the terms of the juvenile's post-release supervision.

(f) The court has jurisdiction over persons 18 years of age or older who are under the extended jurisdiction of the juvenile court.

(g) The court has jurisdiction over the parent, guardian, or custodian of a juvenile who is under the jurisdiction of the court pursuant to this section if the parent, guardian, or custodian has been served with a summons pursuant to G.S. 7B-1805.

"§ 7B-1602. Extended jurisdiction over a delinquent juvenile under certain circumstances.

(a) When a juvenile is committed to the Office for placement in a training school for an offense that would be first degree murder pursuant to G.S. 14-17, first-degree rape pursuant to G.S. 14-27.2, or first-degree sexual offense pursuant to G.S. 14-27.4 if committed by an adult, jurisdiction shall continue until terminated by order of the court or until the juvenile reaches the age of 21 years, whichever occurs first.

(b) When a juvenile is committed to the Office for placement in a training school for an offense that would be a Class B1, B2, C, D, or E felony if committed by an adult, other than an offense set forth in subsection (a) of this section, jurisdiction shall continue until terminated by order of the court or until the juvenile reaches the age of 19 years, whichever occurs first.

"§ 7B-1603. Jurisdiction in certain circumstances.

The court has exclusive original jurisdiction of the following proceedings:

- (1) Proceedings under the Interstate Compact on the Placement of Children set forth in Article 38 of this Chapter;
- (2) Proceedings involving judicial consent for emergency surgical or medical treatment for a juvenile when the juvenile's parent, guardian, custodian, or person who has assumed the status and obligation of a parent without being awarded legal custody of the juvenile by a court refuses to consent for treatment to be rendered; and
- (3) Proceedings to determine whether a juvenile should be emancipated.

"§ 7B-1604. Limitations on juvenile court jurisdiction.

(a) Any juvenile, including a juvenile who is under the jurisdiction of the court, who commits a criminal offense on or after the juvenile's sixteenth birthday is subject to prosecution as an adult. A juvenile who is emancipated shall be prosecuted as an adult for the commission of a criminal offense.

(b) A juvenile who is transferred to and convicted in superior court shall be prosecuted as an adult for any criminal offense the juvenile commits after the superior court conviction.

"ARTICLE 17.

"Screening of Delinquency and Undisciplined Complaints."§ 7B-1700. Intake services.

The chief court counselor, under the direction of the Office, shall establish intake services in each judicial district of the State for all delinquency and undisciplined cases.

The purpose of intake services shall be to determine from available evidence whether there are reasonable grounds to believe the facts alleged are true, to determine whether the facts alleged constitute a delinquent or undisciplined offense within the jurisdiction of the court, to determine whether the facts alleged are sufficiently serious to warrant court action, and to obtain assistance from community resources when court referral is not necessary. The intake counselor shall not engage in field investigations to substantiate complaints or to produce supplementary evidence but may refer complainants to law enforcement agencies for those purposes.

"§ 7B-1701. Preliminary inquiry.

When a complaint is received, the intake counselor shall make a preliminary determination as to whether the juvenile is within the jurisdiction of the court as a delinquent or undisciplined juvenile. If the intake counselor finds that the facts contained in the complaint do not state a case within the jurisdiction of the court, that legal sufficiency has not been established, or that the matters alleged are frivolous, the intake counselor, without further inquiry, shall refuse authorization to file the complaint as a petition.

When requested by the intake counselor, the prosecutor shall assist in determining the sufficiency of evidence as it affects the quantum of proof and the elements of offenses.

The intake counselor, without further inquiry, shall authorize the complaint to be filed as a petition if the intake counselor finds reasonable grounds to believe that the juvenile has committed one of the following nondivertible offenses:

- (1) Murder;
- (2) First-degree rape or second degree rape;
- (3) First-degree sexual offense or second degree sexual offense;
- (4) Arson;
- (5) Any violation of Article 5, Chapter 90 of the General Statutes that would constitute a felony if committed by an adult;
- (6) First degree burglary;
- (7) Crime against nature; or
- (8) Any felony which involves the willful infliction of serious bodily injury upon another or which was committed by use of a deadly weapon.

"§ 7B-1702. Evaluation.

Upon a finding of legal sufficiency, except in cases involving nondivertible offenses set out in G.S. 7B-1701, the intake counselor shall determine whether a complaint should be filed as a petition, the juvenile diverted pursuant to G.S. 7B-1706, or the case resolved without further action. In making the decision, the counselor shall consider criteria provided by the Office. The intake process shall include the following steps if practicable:

- (1) Interviews with the complainant and the victim if someone other than the complainant;
- (2) Interviews with the juvenile and the juvenile's parent, guardian, or custodian;
- (3) Interviews with persons known to have relevant information about the juvenile or the juvenile's family.

Interviews required by this section shall be conducted in person unless it is necessary to conduct them by telephone.

"§ 7B-1703. Evaluation decision.

(a) The intake counselor shall complete evaluation of a complaint within 15 days of receipt of the complaint, with an extension for a maximum of 15 additional days at the discretion of the chief court counselor. The intake counselor shall decide within this time period whether a complaint shall be filed as a juvenile petition.

(b) Except as provided in G.S. 7B-1706, if the intake counselor determines that a complaint should be filed as a petition, the counselor shall file the petition as soon as practicable, but in any event within 15 days after the complaint is received, with an extension for a maximum of 15 additional days at the discretion of the chief court counselor. The intake counselor shall assist the complainant when necessary with the preparation and filing of the petition, shall include on it the date and the words 'Approved for Filing', shall sign it, and shall transmit it to the clerk of superior court.

(c) If the intake counselor determines that a petition should not be filed, the intake counselor shall notify the complainant immediately in writing with reasons for the decision and shall include notice of the complainant's right to have the decision reviewed by the prosecutor. The intake counselor shall sign the complaint after indicating on it:

- (1) The date of the determination;
- (2) The words 'Not Approved for Filing'; and
- (3) Whether the matter is 'Closed' or 'Diverted and Retained'.

Except as provided in G.S. 7B-1706, any complaint not approved for filing as a juvenile petition shall be destroyed by the intake counselor after holding the complaint for a temporary period to allow review as provided in G.S. 7B-1705.

"§ 7B-1704. Request for review by prosecutor.

The complainant has five calendar days, from receipt of the intake counselor's decision not to approve the filing of a petition, to request review by the prosecutor. The intake counselor shall notify the prosecutor immediately of such request and shall transmit to the prosecutor a copy of the complaint. The prosecutor shall notify the complainant and the intake counselor of the time and place for the review.

"§ 7B-1705. Review of determination that petition should not be filed.

No later than 20 days after the complainant is notified, the prosecutor shall review the intake counselor's determination that a juvenile petition should not be filed. Review shall include conferences with the complainant and the intake counselor. At the conclusion of the review, the prosecutor shall: (i) affirm the decision of the intake counselor or direct the filing of a petition and (ii) notify the complainant of the prosecutor's action.

"§ 7B-1706. Diversion plans and referral.

(a) Unless the offense is one in which a petition is required by G.S. 7B-1701, upon a finding of legal sufficiency the intake counselor may divert the juvenile pursuant to a diversion plan, which may include referring the juvenile to any of the following resources:

- (1) An appropriate public or private resource;
- (2) Restitution;
- (3) Community service;
- (4) Victim-offender mediation;
- (5) Regimented physical training;
- (6) Counseling;
- (7) A teen court program, as set forth in subsection (c) of this section.

As part of a diversion plan, the intake counselor may enter into a diversion contract with the juvenile and the juvenile's parent, guardian, or custodian.

(b) Unless the offense is one in which a petition is required by G.S. 7B-1701, upon a finding of legal sufficiency the intake counselor may enter into a diversion contract with the juvenile and the parent, guardian, or custodian; provided, a diversion contract requires the consent of the juvenile and the juvenile's parent, guardian, or custodian. A diversion contract shall:

- (1) State conditions by which the juvenile agrees to abide and any actions the juvenile agrees to take;
- (2) State conditions by which the parent, guardian, or custodian agrees to abide and any actions the parent, guardian, or custodian agrees to take;
- (3) Describe the role of the court counselor in relation to the juvenile and the parent, guardian, or custodian;
- (4) Specify the length of the contract, which shall not exceed six months;
- (5) Indicate that all parties understand and agree that:
 - a. The juvenile's violation of the contract may result in the filing of the complaint as a petition; and
 - b. The juvenile's successful completion of the contract shall preclude the filing of a petition.

After a diversion contract is signed by the parties, the intake counselor shall provide copies of the contract to the juvenile and the juvenile's parent, guardian, or custodian. The intake counselor shall notify any agency or other resource from which the juvenile or the juvenile's parent, guardian, or custodian will be seeking services or treatment pursuant to the terms of the contract. At any time during the term of the contract if the court counselor determines that the juvenile has failed to comply substantially with the terms of the contract, the court counselor may file the complaint as a petition. Unless the court counselor has filed the complaint as a petition, the intake counselor shall close the juvenile's file in regard to the diverted matter within six months after the date of the contract.

(c) If a teen court program has been established in the district, the intake counselor, upon a finding of legal sufficiency, may refer to a teen court program, any case in which a juvenile has allegedly committed an offense that would be an infraction or misdemeanor if committed by an adult.

However, the intake counselor shall not refer a case to a teen court program (i) if the juvenile has been referred to a teen court program previously, or (ii) if the juvenile is alleged to have committed any of the following offenses:

- (1) Driving while impaired under G.S. 20-138.1, 20-138.2, 20-138.3, 20-138.5, or 20-138.7, or any other motor vehicle violation;
- (2) A Class A1 misdemeanor;
- (3) An assault in which a weapon is used; or
- (4) A controlled substance offense under Article 5 of Chapter 90 of the General Statutes, other than simple possession of a Schedule VI drug or alcohol.

(d) The intake counselor shall maintain diversion plans and contracts entered into pursuant to this section to allow intake counselors to determine when a juvenile has had a complaint diverted previously. Diversion plans and contracts are not public records under Chapter 132 of the General Statutes, shall not be included in the clerk's record pursuant to G.S. 7B-3000, and shall be withheld from public inspection or examination. Diversion plans and contracts shall be destroyed when the juvenile reaches the age of 18 years or when the juvenile is no longer under the jurisdiction of the court, whichever is longer.

(e) No later than 60 days after the intake counselor diverts a juvenile, the intake counselor shall determine whether the juvenile and the juvenile's parent, guardian, or custodian have complied with the terms of the diversion plan or contract. In making this determination, the intake counselor shall contact any referral resources to determine whether the juvenile and the juvenile's parent, guardian, or custodian complied with any recommendations for treatment or services made by the resource. If the juvenile and the juvenile's parent, guardian, or custodian have not complied, the intake counselor shall reconsider the decision to divert and may authorize the filing of the complaint as a petition within 10 days after making the determination. If the intake counselor does not file a petition, the intake counselor may continue to monitor the case for up to six months from the date of the diversion plan or contract. At any point during that time period if the juvenile and the juvenile's parent, guardian, or custodian fail to comply, the intake counselor shall reconsider the decision to divert and may authorize the filing of the complaint as a petition. After six months, the intake counselor shall close the diversion plan or contract file.

"ARTICLE 18.

"Venue; Petition; Summons.

"§ 7B-1800. Venue.

A proceeding in which a juvenile is alleged to be delinquent or undisciplined shall be commenced and adjudicated in the district in which the offense is alleged to have occurred. When a proceeding is commenced in a district other than that of the juvenile's residence, the court shall proceed to adjudication in that district. After adjudication, the following procedures shall be available to the court:

- (1) The court may transfer the proceeding to the court in the district where the juvenile resides for disposition.

- (2) Where the proceeding is not transferred under subdivision (1) of this section, the court shall immediately notify the chief district court judge in the district in which the juvenile resides. If the chief district court judge requests a transfer within five days after receipt of notification, the court shall transfer the proceeding.
- (3) Where the proceeding is not transferred under subdivision (1) or (2) of this section, the court, upon motion of the juvenile, shall transfer the proceeding to the court in the district where the juvenile resides for disposition. The court shall advise the juvenile of the juvenile's right to transfer under this section.

"§ 7B-1801. Pleading and process.

The pleading in a juvenile action is the petition. The process in a juvenile action is the summons.

"§ 7B-1802. Petition.

The petition shall contain the name, date of birth, and address of the juvenile and the name and last known address of the juvenile's parent, guardian, or custodian. The petition shall allege the facts that invoke jurisdiction over the juvenile. The petition shall not contain information on more than one juvenile.

A petition in which delinquency is alleged shall contain a plain and concise statement, without allegations of an evidentiary nature, asserting facts supporting every element of a criminal offense and the juvenile's commission thereof with sufficient precision clearly to apprise the juvenile of the conduct which is the subject of the allegation.

Sufficient copies of the petition shall be prepared so that copies will be available for the juvenile, for each parent if living separate and apart, for the guardian or custodian if any, for the court counselor, for the prosecutor, and for any person determined by the court to be a necessary party.

"§ 7B-1803. Receipt of complaints; filing of petition.

(a) All complaints concerning a juvenile alleged to be delinquent or undisciplined shall be referred to the intake counselor for screening and evaluation. Thereafter, if the intake counselor determines that a petition should be filed, the petition shall be drawn by the intake counselor or the clerk, signed by the complainant, and verified before an official authorized to administer oaths. If the circumstances indicate a need for immediate attachment of jurisdiction and if the intake counselor is out of the county or otherwise unavailable to receive a complaint and to draw a petition when it is needed, the clerk shall assist the complainant in communicating the complaint to the intake counselor by telephone and, with the approval of the intake counselor, shall draw a petition and file it when signed and verified. A copy of the complaint and petition shall be transmitted to the intake counselor. Procedures for receiving delinquency and undisciplined complaints and drawing petitions thereon, consistent with this Article and Article 17 of this Chapter, shall be established by administrative order of the chief judge in each judicial district.

(b) If review is requested pursuant to G.S. 7B-1704, the prosecutor shall review a complaint and any decision of the intake counselor not to authorize that the complaint be filed as a petition. If the prosecutor, after review, authorizes a complaint to be filed as a petition, the prosecutor shall prepare

the complaint to be filed by the clerk as a petition, recording the day of filing.

"§ 7B-1804. Commencement of action.

(a) An action is commenced by the filing of a petition in the clerk's office when that office is open, or by a magistrate's acceptance of a petition for filing pursuant to subsection (b) of this section when the clerk's office is closed.

(b) When the office of the clerk is closed and an intake counselor requests a petition alleging a juvenile to be delinquent or undisciplined, a magistrate may draw and verify the petition and accept it for filing, which acceptance shall constitute filing. The magistrate's authority under this subsection is limited to emergency situations when a petition is required in order to obtain a secure or nonsecure custody order. Any petition accepted for filing under this subsection shall be delivered to the clerk's office for processing as soon as that office is open for business.

"§ 7B-1805. Issuance of summons.

(a) Immediately after a petition has been filed alleging that a juvenile is undisciplined or delinquent, the clerk shall issue a summons to the juvenile and to the parent, guardian, or custodian requiring them to appear for a hearing at the time and place stated in the summons. A copy of the petition shall be attached to each summons.

(b) A summons shall be on a printed form supplied by the Administrative Office of the Courts and shall include:

- (1) Notice of the nature of the proceeding and the purpose of the hearing scheduled on the summons.
- (2) Notice of any right to counsel and information about how to seek the appointment of counsel prior to a hearing.
- (3) Notice that, if the court determines at the adjudicatory hearing that the allegations of the petition are true, the court will conduct a dispositional hearing and will have jurisdiction to enter orders affecting substantial rights of the juvenile and of the parent, guardian, or custodian, including orders that:
 - a. Affect the juvenile's custody;
 - b. Impose conditions on the juvenile;
 - c. Require that the juvenile receive medical, psychiatric, psychological, or other treatment and that the parent participate in the treatment;
 - d. Require the parent to undergo psychiatric, psychological, or other treatment or counseling;
 - e. Order the parent to pay for treatment that is ordered for the juvenile or the parent; and
 - f. Order the parent to pay support for the juvenile for any period the juvenile does not reside with the parent or to pay attorneys' fees or other fees or expenses as ordered by the court.
- (4) Notice that the parent, guardian, or custodian shall be required to attend scheduled hearings and that failure without reasonable cause to attend may result in proceedings for contempt of court.

- (5) Notice that the parent, guardian, or custodian shall be responsible for bringing the juvenile before the court at any hearing the juvenile is required to attend and that failure without reasonable cause to bring the juvenile before the court may result in proceedings for contempt of court.

(c) The summons shall advise the parent, guardian, or custodian that upon service, jurisdiction over the parent, guardian, or custodian is obtained and that failure of the parent, guardian, or custodian to appear or bring the juvenile before the court without reasonable cause or to comply with any order of the court pursuant to Article 27 of this Chapter may cause the court to issue a show cause order for contempt. The summons shall contain the following language in bold type:

'TO THE PARENT(S), GUARDIAN(S), OR CUSTODIAN(S): YOUR FAILURE TO APPEAR IN COURT FOR A SCHEDULED HEARING OR TO COMPLY WITH AN ORDER OF THE COURT MAY RESULT IN A FINDING OF CRIMINAL CONTEMPT. A PERSON HELD IN CRIMINAL CONTEMPT MAY BE SUBJECT TO IMPRISONMENT OF UP TO 30 DAYS, A FINE NOT TO EXCEED FIVE HUNDRED DOLLARS (\$500.00) OR BOTH.'

(d) A summons shall be directed to the person summoned to appear and shall be delivered to any person authorized to serve process.

"§ 7B-1806. Service of summons.

The summons and petition shall be personally served upon the parent, the guardian, or custodian and the juvenile not less than five days prior to the date of the scheduled hearing. The time for service may be waived in the discretion of the court.

If the parent, guardian, or custodian entitled to receive a summons cannot be found by a diligent effort, the court may authorize service of the summons and petition by mail or by publication. The cost of the service by publication shall be advanced by the petitioner and may be charged as court costs as the court may direct.

The court may issue a show cause order for contempt against a parent, guardian, or custodian who is personally served and fails without reasonable cause to appear and to bring the juvenile before the court.

The provisions of G.S. 15A-301(a), (c), (d), and (e) relating to criminal process apply to juvenile process; provided the period of time for return of an unserved summons is 30 days.

"§ 7B-1807. Notice to parent and juvenile of scheduled hearings.

The clerk shall give to all parties, including both parents of the juvenile, the juvenile's guardian or custodian, and any other person who has assumed the status and obligation of a parent without being awarded legal custody of the juvenile by a court, five days' written notice of the date and time of all scheduled hearings unless the party is notified in open court or the court orders otherwise.

"§ 7B-1808. First appearance for felony cases.

(a) A juvenile who is alleged in the petition to have committed an offense that would be a felony if committed by an adult shall be summoned to appear before the court for a first appearance within 10 days of the filing of the petition. If the juvenile is in secure or nonsecure custody, the first

appearance shall take place at the initial hearing required by G.S. 7B-1906. Unless the juvenile is in secure or nonsecure custody, the court may continue the first appearance to a time certain for good cause.

(b) At the first appearance, the court shall:

- (1) Inform the juvenile of the allegations set forth in the petition;
- (2) Determine whether the juvenile has retained counsel or has been assigned counsel and, if the juvenile is not represented by counsel, appoint counsel for the juvenile;
- (3) If applicable, inform the juvenile of the date of the probable cause hearing, which shall be within 15 days of the first appearance; and
- (4) Inform the parent, guardian, or custodian that the parent, guardian, or custodian is required to attend all hearings scheduled in the matter and may be held in contempt of court for failure to attend any scheduled hearing.

"ARTICLE 19.

"Temporary Custody; Secure and Nonsecure Custody;
Custody Hearings.

"§ 7B-1900. Taking a juvenile into temporary custody.

Temporary custody means the taking of physical custody and providing personal care and supervision until a court order for secure or nonsecure custody can be obtained. A juvenile may be taken into temporary custody without a court order under the following circumstances:

- (1) By a law enforcement officer if grounds exist for the arrest of an adult in identical circumstances under G.S. 15A-401(b).
- (2) By a law enforcement officer or a court counselor if there are reasonable grounds to believe that the juvenile is an undisciplined juvenile.
- (3) By a law enforcement officer, by a court counselor, by a member of the Black Mountain Center, Alcohol Rehabilitation Center, and Juvenile Evaluation Center Joint Security Force established pursuant to G.S. 122C-421, or by personnel of the Office if there are reasonable grounds to believe the juvenile is an absconder from any residential facility operated by the Office or from an approved detention facility.

"§ 7B-1901. Duties of person taking juvenile into temporary custody.

(a) A person who takes a juvenile into custody without a court order under G.S. 7B-1900(1) or (2) shall proceed as follows:

- (1) Notify the juvenile's parent, guardian, or custodian that the juvenile has been taken into temporary custody and advise the parent, guardian, or custodian of the right to be present with the juvenile until a determination is made as to the need for secure or nonsecure custody. Failure to notify the parent, guardian, or custodian that the juvenile is in custody shall not be grounds for release of the juvenile.
- (2) Release the juvenile to the juvenile's parent, guardian, or custodian if the person having the juvenile in temporary custody decides that continued custody is unnecessary. In the case of a juvenile unlawfully absent from school, if continued custody is

unnecessary, the person having temporary custody may deliver the juvenile to the juvenile's school or, if the local city or county government and the local school board adopt a policy, to a place in the local school administrative unit.

- (3) If the juvenile is not released, request that a petition be drawn pursuant to G.S. 7B-1803 or G.S. 7B-1804. Once the petition has been drawn and verified, the person shall communicate with the intake counselor. If the intake counselor approves the filing of the petition, the intake counselor shall contact the judge or the person delegated authority pursuant to G.S. 7B-1902 if other than the intake counselor, for a determination of the need for continued custody.

(b) A juvenile taken into temporary custody under this Article shall not be held for more than 12 hours, or for more than 24 hours if any of the 12 hours falls on a Saturday, Sunday, or legal holiday, unless a petition or motion for review has been filed and an order for secure or nonsecure custody has been entered.

(c) A person who takes a juvenile into custody under G.S. 7B-1900(3), after receiving an order for secure custody, shall transport the juvenile to the nearest approved facility providing secure custody. The person then shall contact the administrator of the facility from which the juvenile absconded, who shall be responsible for returning the juvenile to that facility.

"§ 7B-1902. Authority to issue custody orders; delegation.

In the case of any juvenile alleged to be within the jurisdiction of the court, when the court finds it necessary to place the juvenile in custody, the court may order that the juvenile be placed in secure or nonsecure custody pursuant to criteria set out in G.S. 7B-1903.

Any district court judge may issue secure and nonsecure custody orders pursuant to G.S. 7B-1903. The chief district court judge may delegate the court's authority to the chief court counselor or the chief court counselor's counseling staff by administrative order filed in the office of the clerk of superior court. The administrative order shall specify which persons may be contacted for approval of a secure or nonsecure custody order. The chief district court judge shall not delegate the court's authority to detain or house juveniles in holdover facilities pursuant to G.S. 7B-1905 or G.S. 7B-2512.

"§ 7B-1903. Criteria for secure or nonsecure custody.

(a) When a request is made for nonsecure custody, the court shall first consider release of the juvenile to the juvenile's parent, guardian, custodian, or other responsible adult. An order for nonsecure custody shall be made only when there is a reasonable factual basis to believe the matters alleged in the petition are true, and that:

- (1) The juvenile is a runaway and consents to nonsecure custody; or
- (2) The juvenile meets one or more of the criteria for secure custody, but the court finds it in the best interests of the juvenile that the juvenile be placed in a nonsecure placement.

(b) When a request is made for secure custody, the court may order secure custody only where the court finds there is a reasonable factual basis to believe that the juvenile committed the offense as alleged in the petition, and that one of the following circumstances exists:

- (1) The juvenile is charged with a felony and has demonstrated that the juvenile is a danger to property or persons.
- (2) The juvenile is charged with a misdemeanor at least one element of which is assault on a person and has demonstrated that the juvenile is a danger to persons.
- (3) The juvenile has willfully failed to appear on a pending delinquency charge or on charges of violation of probation or post-release supervision, providing the juvenile was properly notified.
- (4) A delinquency charge is pending against the juvenile, and there is reasonable cause to believe the juvenile will not appear in court.
- (5) The juvenile is an absconder from (i) any residential facility operated by the Office or any detention facility in this State or (ii) any comparable facility in another state.
- (6) There is reasonable cause to believe the juvenile should be detained for the juvenile's own protection because the juvenile has recently suffered or attempted self-inflicted physical injury. In such case, the juvenile must have been refused admission by one appropriate hospital, and the period of secure custody is limited to 24 hours to determine the need for inpatient hospitalization. If the juvenile is placed in secure custody, the juvenile shall receive continuous supervision and a physician shall be notified immediately.
- (7) The juvenile is alleged to be undisciplined by virtue of the juvenile's being a runaway and is inappropriate for nonsecure custody placement or refuses nonsecure custody, and the court finds that the juvenile needs secure custody for up to 24 hours, excluding Saturdays, Sundays, and State holidays, or where circumstances require, for a period not to exceed 72 hours to evaluate the juvenile's need for medical or psychiatric treatment or to facilitate reunion with the juvenile's parents, guardian, or custodian.
- (8) The juvenile is alleged to be undisciplined and has willfully failed to appear in court after proper notice; the juvenile shall be brought to court as soon as possible and in no event should be held more than 24 hours, excluding Saturdays, Sundays, and State holidays or where circumstances require for a period not to exceed 72 hours.

(c) When a juvenile has been adjudicated delinquent, the court may order secure custody pending the dispositional hearing or pending placement of the juvenile pursuant to G.S. 7B-2506.

(d) The court may order secure custody for a juvenile who is alleged to have violated the conditions of the juvenile's probation or post-release supervision, but only if the juvenile is alleged to have committed acts that damage property or injure persons.

(e) If the criteria for secure custody as set out in subsection (b), (c), or (d) of this section are met, the court may enter an order directing an officer or other authorized person to assume custody of the juvenile and to take the juvenile to the place designated in the order.

"§ 7B-1904. Order for secure or nonsecure custody.

The custody order shall be in writing and shall direct a law enforcement officer or other authorized person to assume custody of the juvenile and to make due return on the order. The official executing the order shall give a copy of the order to the juvenile's parent, guardian, or custodian. If the order is for secure custody, copies of the petition and custody order shall accompany the juvenile to the detention facility or holdover facility of the jail. A message of the Division of Criminal Information, State Bureau of Investigation, stating that a juvenile petition and secure custody order relating to a specified juvenile are on file in a particular county shall be authority to detain the juvenile in secure custody until a copy of the juvenile petition and secure custody order can be forwarded to the juvenile detention facility. The copies of the juvenile petition and secure custody order shall be transmitted to the detention facility no later than 72 hours after the initial detention of the juvenile.

An officer receiving an order for custody which is complete and regular on its face may execute it in accordance with its terms and need not inquire into its regularity or continued validity, nor does the officer incur criminal or civil liability for its execution.

"§ 7B-1905. Place of secure or nonsecure custody.

(a) A juvenile meeting the criteria set out in G.S. 7B-1903(a), may be placed in nonsecure custody with a department of social services or a person designated in the order for temporary residential placement in:

- (1) A licensed foster home or a home otherwise authorized by law to provide such care;
- (2) A facility operated by a department of social services; or
- (3) Any other home or facility approved by the court and designated in the order.

In placing a juvenile in nonsecure custody, the court shall first consider whether a relative of the juvenile is willing and able to provide proper care and supervision of the juvenile. If the court finds that the relative is willing and able to provide proper care and supervision, the court shall order placement of the juvenile with the relative. Placement of a juvenile outside of this State shall be in accordance with the Interstate Compact on the Placement of Children set forth in Article 38 of this Chapter.

(b) Pursuant to G.S. 7B-1903(b), (c), or (d), a juvenile may be temporarily detained in an approved detention facility which shall be separate from any jail, lockup, prison, or other adult penal institution, except as provided in subsection (c) of this section. It shall be unlawful for a county or any unit of government to operate a juvenile detention facility unless the facility meets the standards and rules adopted by the Department of Health and Human Services.

(c) A juvenile who has allegedly committed an offense that would be a Class A, B1, B2, C, D, or E felony if committed by an adult may be detained in secure custody in a holdover facility up to 72 hours, if the court, based on information provided by the court counselor, determines that no acceptable alternative placement is available and the protection of the public requires the juvenile be housed in a holdover facility.

"§ 7B-1906. Secure or nonsecure custody hearings.

(a) No juvenile shall be held under a secure custody order for more than five calendar days or under a nonsecure custody order for more than seven calendar days without a hearing on the merits or an initial hearing to determine the need for continued custody. A hearing conducted under this subsection may not be continued or waived. In every case in which an order has been entered by an official exercising authority delegated pursuant to G.S. 7B-1902, a hearing to determine the need for continued custody shall be conducted on the day of the next regularly scheduled session of district court in the city or county where the order was entered if the session precedes the expiration of the applicable time period set forth in this subsection. If the session does not precede the expiration of the time period, the hearing may be conducted at another regularly scheduled session of district court in the district where the order was entered.

(b) As long as the juvenile remains in secure or nonsecure custody, further hearings to determine the need for continued secure custody shall be held at intervals of no more than 10 calendar days. A subsequent hearing on continued nonsecure custody shall be held within seven business days, excluding Saturdays, Sundays, and legal holidays, of the initial hearing required in subsection (a) of this section and hearings thereafter shall be held at intervals of no more than 30 calendar days. In the case of a juvenile alleged to be delinquent, further hearings may be waived only with the consent of the juvenile, through counsel for the juvenile.

(c) The court shall determine whether a juvenile who is alleged to be delinquent has retained counsel or has been assigned counsel; and, if the juvenile is not represented by counsel, appoint counsel for the juvenile.

(d) At a hearing to determine the need for continued custody, the court shall receive testimony and shall allow the juvenile and the juvenile's parent, guardian, or custodian an opportunity to introduce evidence, to be heard in their own behalf, and to examine witnesses. The State shall bear the burden at every stage of the proceedings to provide clear and convincing evidence that restraints on the juvenile's liberty are necessary and that no less intrusive alternative will suffice. The court shall not be bound by the usual rules of evidence at the hearings.

(e) The court shall be bound by criteria set forth in G.S. 7B-1903 in determining whether continued custody is warranted.

(f) The court may impose appropriate restrictions on the liberty of a juvenile who is released from secure custody, including:

- (1) Release on the written promise of the juvenile's parent, guardian, or custodian to produce the juvenile in court for subsequent proceedings;
- (2) Release into the care of a responsible person or organization;
- (3) Release conditioned on restrictions on activities, associations, residence, or travel if reasonably related to securing the juvenile's presence in court; or
- (4) Any other conditions reasonably related to securing the juvenile's presence in court.

(g) If the court determines that the juvenile meets the criteria in G.S. 7B-1903 and should continue in custody, the court shall issue an order to that effect. The order shall be in writing with appropriate findings of fact.

The findings of fact shall include the evidence relied upon in reaching the decision and the purposes which continued custody is to achieve.

(h) The hearing to determine the need to continue custody may be conducted by audio and video transmission which allows the court and the juvenile to see and hear each other. If the juvenile has counsel, the juvenile may communicate fully and confidentially with the juvenile's attorney during the proceeding. Prior to the use of audio and video transmission, the procedures and type of equipment for audio and video transmission shall be submitted to the Administrative Office of the Courts by the chief district court judge and approved by the Administrative Office of the Courts.

"§ 7B-1907. Telephonic communication authorized.

All communications, notices, orders, authorizations, and requests authorized or required by G.S. 7B-1901, 7B-1903, and 7B-1904 may be made by telephone when other means of communication are impractical. All written orders pursuant to telephonic communication shall bear the name and the title of the person communicating by telephone, the signature and the title of the official entering the order, and the hour and the date of the authorization.

"ARTICLE 20.

"Basic Rights.

"§ 7B-2000. Juvenile's right to counsel; presumption of indigence.

(a) A juvenile alleged to be within the jurisdiction of the court has the right to be represented by counsel in all proceedings. The court shall appoint counsel for the juvenile, unless counsel is retained for the juvenile, in any proceeding in which the juvenile is alleged to be (i) delinquent or (ii) in contempt of court when alleged or adjudicated to be undisciplined.

(b) All juveniles shall be conclusively presumed to be indigent, and it shall not be necessary for the court to receive from any juvenile an affidavit of indigency.

"§ 7B-2001. Appointment of guardian.

In any case when no parent, guardian, or custodian appears in a hearing with the juvenile or when the court finds it would be in the best interests of the juvenile, the court may appoint a guardian of the person for the juvenile. The guardian shall operate under the supervision of the court with or without bond and shall file only such reports as the court shall require. Unless the court orders otherwise, the guardian:

- (1) Shall have the care, custody, and control of the juvenile or may arrange a suitable placement for the juvenile.
- (2) May represent the juvenile in legal actions before any court.
- (3) May consent to certain actions on the part of the juvenile in place of the parent or custodian, including (i) marriage, (ii) enlisting in the armed forces, and (iii) enrollment in school.
- (4) May consent to any necessary remedial, psychological, medical, or surgical treatment for the juvenile.

The authority of the guardian shall continue until the guardianship is terminated by court order, until the juvenile is emancipated pursuant to Subchapter IV of this Chapter, or until the juvenile reaches the age of majority.

"§ 7B-2002. Payment of court-appointed attorney.

An attorney appointed pursuant to G.S. 7B-2000 or pursuant to any other provision of this Subchapter shall be paid a reasonable fee fixed by the court in the same manner as fees for attorneys appointed in cases of indigency through the Administrative Office of the Courts. The court may require payment of the attorneys' fees from a person other than the juvenile as provided in G.S. 7A-450.1, 7A-450.2, and 7A-450.3. A person who does not comply with the court's order of payment may be found in civil contempt as provided in G.S. 5A-21.

"ARTICLE 21.

"Law Enforcement Procedures in Delinquency Proceedings.

"§ 7B-2100. Role of the law enforcement officer.

A law enforcement officer who takes a juvenile into temporary custody should select the most appropriate course of action to the situation, the needs of the juvenile, and the protection of the public safety. The officer may:

- (1) Release the juvenile, with or without first counseling the juvenile;
- (2) Release the juvenile to the juvenile's parent, guardian, or custodian;
- (3) Refer the juvenile to community resources;
- (4) Seek a petition; or
- (5) Seek a petition and request a custody order.

"§ 7B-2101. Interrogation procedures.

(a) Any juvenile in custody must be advised prior to questioning:

- (1) That the juvenile has a right to remain silent;
- (2) That any statement the juvenile does make can be and may be used against the juvenile;
- (3) That the juvenile has a right to have a parent, guardian, or custodian present during questioning; and
- (4) That the juvenile has a right to consult with an attorney and that one will be appointed for the juvenile if the juvenile is not represented and wants representation.

(b) When the juvenile is less than 14 years of age, no in-custody admission or confession resulting from interrogation may be admitted into evidence unless the confession or admission was made in the presence of the juvenile's parent, guardian, custodian, or attorney. If an attorney is not present, the parent, guardian, or custodian as well as the juvenile must be advised of the juvenile's rights as set out in subsection (a) of this section; however, a parent, guardian, or custodian may not waive any right on behalf of the juvenile.

(c) If the juvenile indicates in any manner and at any stage of questioning pursuant to this section that the juvenile does not wish to be questioned further, the officer shall cease questioning.

(d) Before admitting into evidence any statement resulting from custodial interrogation, the court shall find that the juvenile knowingly, willingly, and understandingly waived the juvenile's rights.

"§ 7B-2102. Fingerprinting and photographing juveniles.

(a) A law enforcement officer or agency shall fingerprint and photograph a juvenile who was 10 years of age or older at the time the juvenile allegedly committed a nondivertible offense as set forth in G.S. 7B-1701, when a

complaint has been prepared for filing as a petition and the juvenile is in physical custody of law enforcement or the Office.

(b) If a law enforcement officer or agency does not take the fingerprints or a photograph of the juvenile pursuant to subsection (a) of this section or the fingerprints or photograph have been destroyed pursuant to subsection (e) of this section, a law enforcement officer or agency shall fingerprint and photograph a juvenile who has been adjudicated delinquent if the juvenile was 10 years of age or older at the time the juvenile committed an offense that would be a felony if committed by an adult.

(c) A law enforcement officer or agency who fingerprints or photographs a juvenile pursuant to this section shall do so in a proper format for transfer to the State Bureau of Investigation and the Federal Bureau of Investigation. After the juvenile, who was 10 years of age or older at the time of the offense, is adjudicated delinquent of an offense that would be a felony if committed by an adult, fingerprints obtained pursuant to this section shall be transferred to the State Bureau of Investigation and placed in the Automated Fingerprint Identification System (AFIS) to be used for all investigative and comparison purposes. Photographs obtained pursuant to this section shall be placed in a format approved by the State Bureau of Investigation and may be used for all investigative or comparison purposes.

(d) Fingerprints and photographs taken pursuant to this section are not public records under Chapter 132 of the General Statutes, shall not be included in the clerk's record pursuant to G.S. 7B-3000, shall be withheld from public inspection or examination, and shall not be eligible for expunction pursuant to G.S. 7B-3200. Fingerprints and photographs taken pursuant to this section shall be maintained separately from any juvenile record, other than the electronic file maintained by the State Bureau of Investigation.

(e) If a juvenile is fingerprinted and photographed pursuant to subsection (a) of this section, the custodian of records shall destroy all fingerprints and photographs at the earlier of the following:

- (1) The intake counselor or prosecutor does not file a petition against the juvenile within one year of fingerprinting and photographing the juvenile pursuant to subsection (a) of this section;
- (2) The court does not find probable cause pursuant to G.S. 7B-2202; or
- (3) The juvenile is not adjudicated delinquent of any offense that would be a felony or a misdemeanor if committed by an adult.

The chief court counselor shall notify the local custodian of records, and the local custodian of records shall notify any other record-holding agencies, when a decision is made not to file a petition, the court does not find probable cause, or the court does not adjudicate the juvenile delinquent.

"§ 7B-2103. Authority to issue nontestimonial identification order where juvenile alleged to be delinquent.

Except as provided in G.S. 7B-2102, nontestimonial identification procedures shall not be conducted on any juvenile without a court order issued pursuant to this Article unless the juvenile has been charged as an adult or transferred to superior court for trial as an adult in which case procedures applicable to adults, as set out in Articles 14 and 23 of Chapter

15A of the General Statutes, shall apply. A nontestimonial identification order authorized by this Article may be issued by any judge of the district court or of the superior court upon request of a prosecutor. As used in this Article, 'nontestimonial identification' means identification by fingerprints, palm prints, footprints, measurements, blood specimens, urine specimens, saliva samples, hair samples, or other reasonable physical examination, handwriting exemplars, voice samples, photographs, and lineups or similar identification procedures requiring the presence of a juvenile.

"§ 7B-2104. Time of application for nontestimonial identification order.

A request for a nontestimonial identification order may be made prior to taking a juvenile into custody or after custody and prior to the adjudicatory hearing.

"§ 7B-2105. Grounds for nontestimonial identification order.

(a) Except as provided in subsection (b) of this section, a nontestimonial identification order may issue only on affidavit or affidavits sworn to before the court and establishing the following grounds for the order:

- (1) That there is probable cause to believe that an offense has been committed that would be a felony if committed by an adult;
- (2) That there are reasonable grounds to suspect that the juvenile named or described in the affidavit committed the offense; and
- (3) That the results of specific nontestimonial identification procedures will be of material aid in determining whether the juvenile named in the affidavit committed the offense.

(b) A nontestimonial identification order to obtain a blood specimen from a juvenile may issue only on affidavit or affidavits sworn to before the court and establishing the following grounds for the order:

- (1) That there is probable cause to believe that an offense has been committed that would be a felony if committed by an adult;
- (2) That there is probable cause to believe that the juvenile named or described in the affidavit committed the offense; and
- (3) That there is probable cause to believe that obtaining a blood specimen from the juvenile will be of material aid in determining whether the juvenile named in the affidavit committed the offense.

"§ 7B-2106. Issuance of order.

Upon a showing that the grounds specified in G.S. 7B-2105 exist, the judge may issue an order following the same procedure as in the case of adults under G.S. 15A-274, 15A-275, 15A-276, 15A-277, 15A-278, 15A-279, 15A-280, and 15A-282.

"§ 7B-2107. Nontestimonial identification order at request of juvenile.

A juvenile in custody for or charged with an offense which if committed by an adult would be a felony offense may request that nontestimonial identification procedures be conducted. If it appears that the results of specific nontestimonial identification procedures will be of material aid to the juvenile's defense, the judge to whom the request was directed must order the State to conduct the identification procedures.

"§ 7B-2108. Destruction of records resulting from nontestimonial identification procedures.

The results of any nontestimonial identification procedures shall be retained or disposed of as follows:

- (1) If a petition is not filed against a juvenile who has been the subject of nontestimonial identification procedures, all records of the evidence shall be destroyed.
- (2) If the juvenile is not adjudicated delinquent or convicted in superior court following transfer, all records resulting from a nontestimonial order shall be destroyed. Further, in the case of a juvenile who is under 13 years of age and who is adjudicated delinquent for an offense that would be less than a felony if committed by an adult, all records shall be destroyed.
- (3) If a juvenile 13 years of age or older is adjudicated delinquent for an offense that would be a felony if committed by an adult, all records resulting from a nontestimonial order may be retained in the court file. Special precautions shall be taken to ensure that these records will be maintained in a manner and under sufficient safeguards to limit their use to inspection by law enforcement officers for comparison purposes in the investigation of a crime.
- (4) If the juvenile is transferred to and convicted in superior court, all records resulting from nontestimonial identification procedures shall be processed as in the case of an adult.
- (5) Any evidence seized pursuant to a nontestimonial order shall be retained by law enforcement officers until further order is entered by the court.
- (6) Destruction of nontestimonial identification records pursuant to this section shall be performed by the law enforcement agency having possession of the records. Following destruction, the law enforcement agency shall make written certification to the court of the destruction.

"§ 7B-2109. Penalty for willful violation.

Any person who willfully violates provisions of this Article which prohibit conducting nontestimonial identification procedures without an order issued by the court shall be guilty of a Class 1 misdemeanor.

"ARTICLE 22.

"Probable Cause Hearing and Transfer Hearing.

"§ 7B-2200. Transfer of jurisdiction of juvenile to superior court.

After notice, hearing, and a finding of probable cause the court may, upon motion of the prosecutor or the juvenile's attorney or upon its own motion, transfer jurisdiction over a juvenile to superior court if the juvenile was 13 years of age or older at the time the juvenile allegedly committed an offense that would be a felony if committed by an adult. If the alleged felony constitutes a Class A felony and the court finds probable cause, the court shall transfer the case to the superior court for trial as in the case of adults.

"§ 7B-2201. Fingerprinting juvenile transferred to superior court.

When jurisdiction over a juvenile is transferred to the superior court, the juvenile shall be fingerprinted and the juvenile's fingerprints shall be sent to the State Bureau of Investigation.

"§ 7B-2202. Probable cause hearing.

(a) The court shall conduct a hearing to determine probable cause in all felony cases in which a juvenile was 13 years of age or older when the offense was allegedly committed. The hearing shall be conducted within 15

days of the date of the juvenile's first appearance. The court may continue the hearing for good cause.

(b) At the probable cause hearing:

- (1) A prosecutor shall represent the State;
- (2) The juvenile shall be represented by counsel;
- (3) The juvenile may testify, call, and examine witnesses, and present evidence; and
- (4) Each witness shall testify under oath or affirmation and be subject to cross-examination.

(c) The State shall by nonhearsay evidence, or by evidence that satisfies an exception to the hearsay rule, show that there is probable cause to believe that the offense charged has been committed and that there is probable cause to believe that the juvenile committed it, except:

- (1) A report or copy of a report made by a physicist, chemist, firearms identification expert, fingerprint technician, or an expert or technician in some other scientific, professional, or medical field, concerning the results of an examination, comparison, or test performed in connection with the case in issue, when stated in a report by that person, is admissible in evidence;
- (2) If there is no serious contest, reliable hearsay is admissible to prove value, ownership of property, possession of property in a person other than the juvenile, lack of consent of the owner, possessor, or custodian of property to the breaking or entering of premises, chain of custody, and authenticity of signatures.

(d) Counsel for the juvenile may waive in writing the right to the hearing and stipulate to a finding of probable cause.

(e) If probable cause is found and transfer to superior court is not required by G.S. 7B-2200, upon motion of the prosecutor or the juvenile's attorney or upon its own motion, the court shall either proceed to a transfer hearing or set a date for that hearing. If the juvenile has not received notice of the intention to seek transfer at least five days prior to the probable cause hearing, the court, at the request of the juvenile, shall continue the transfer hearing.

(f) If the court does not find probable cause for a felony offense, the court shall:

- (1) Dismiss the proceeding, or
- (2) If the court finds probable cause to believe that the juvenile committed a lesser included offense that would constitute a misdemeanor if committed by an adult, either proceed to an adjudicatory hearing or set a date for that hearing.

"§ 7B-2203. Transfer hearing.

(a) At the transfer hearing, the prosecutor and the juvenile may be heard and may offer evidence, and the juvenile's attorney may examine any court or probation records, or other records the court may consider in determining whether to transfer the case.

(b) In the transfer hearing, the court shall determine whether the protection of the public and the needs of the juvenile will be served by transfer of the case to superior court and shall consider the following factors:

- (1) The age of the juvenile;
- (2) The maturity of the juvenile;
- (3) The intellectual functioning of the juvenile;
- (4) The prior record of the juvenile;
- (5) Prior attempts to rehabilitate the juvenile;
- (6) Facilities or programs available to the court prior to the expiration of the court's jurisdiction under this Subchapter and the likelihood that the juvenile would benefit from treatment or rehabilitative efforts;
- (7) Whether the alleged offense was committed in an aggressive, violent, premeditated, or willful manner; and
- (8) The seriousness of the offense and whether the protection of the public requires that the juvenile be prosecuted as an adult.

(c) Any order of transfer shall specify the reasons for transfer. When the case is transferred to superior court, the superior court has jurisdiction over that felony, any offense based on the same act or transaction or on a series of acts or transactions connected together or constituting parts of a single scheme or plan of that felony, and any greater or lesser included offense of that felony.

(d) If the court does not transfer the case to superior court, the court shall either proceed to an adjudicatory hearing or set a date for that hearing.
"§ 7B-2204. Right to pretrial release; detention.

Once the order of transfer has been entered, the juvenile has the right to pretrial release as provided in G.S. 15A-533 and G.S. 15A-534. The release order shall specify the person or persons to whom the juvenile may be released. Pending release, the court shall order that the juvenile be detained in a detention facility while awaiting trial. The court may order the juvenile to be held in a holdover facility at any time the presence of the juvenile is required in court for pretrial hearings or trial, if the court finds that it would be inconvenient to return the juvenile to the detention facility.

Should the juvenile be found guilty, or enter a plea of guilty or no contest to a criminal offense in superior court and receive an active sentence, then immediate transfer to the Department of Correction shall be ordered. Until such time as the juvenile is transferred to the Department of Correction, the juvenile may be detained in a holdover facility. The juvenile may not be detained in a detention facility pending transfer to the Department of Correction.

The juvenile may be kept by the Department of Correction as a safekeeper until the juvenile is placed in an appropriate correctional program.

"ARTICLE 23.

"Discovery.

"§ 7B-2300. Disclosure of evidence by petitioner.

(a) Statement of the Juvenile. -- Upon motion of a juvenile alleged to be delinquent, the court shall order the petitioner:

- (1) To permit the juvenile to inspect and copy any relevant written or recorded statements within the possession, custody, or control of the petitioner made by the juvenile or any other party charged in the same action; and

- (2) To divulge, in written or recorded form, the substance of any oral statement made by the juvenile or any other party charged in the same action.

(b) Names of Witnesses. -- Upon motion of the juvenile, the court shall order the petitioner to furnish the names of persons to be called as witnesses. A copy of the record of witnesses under the age of 16 shall be provided by the petitioner to the juvenile upon the juvenile's motion if accessible to the petitioner.

(c) Documents and Tangible Objects. -- Upon motion of the juvenile, the court shall order the petitioner to permit the juvenile to inspect and copy books, papers, documents, photographs, motion pictures, mechanical or electronic recordings, tangible objects, or portions thereof:

- (1) Which are within the possession, custody, or control of the petitioner, the prosecutor, or any law enforcement officer conducting an investigation of the matter alleged; and
- (2) Which are material to the preparation of the defense, are intended for use by the petitioner as evidence, or were obtained from or belong to the juvenile.

(d) Reports of Examinations and Tests. -- Upon motion of a juvenile, the court shall order the petitioner to permit the juvenile to inspect and copy results of physical or mental examinations or of tests, measurements, or experiments made in connection with the case, within the possession, custody, or control of the petitioner. In addition upon motion of a juvenile, the court shall order the petitioner to permit the juvenile to inspect, examine, and test, subject to appropriate safeguards, any physical evidence or a sample of it or tests or experiments made in connection with the evidence in the case if it is available to the petitioner, the prosecutor, or any law enforcement officer conducting an investigation of the matter alleged, and if the petitioner intends to offer the evidence at trial.

(e) Except as provided in subsections (a) through (d) of this section, this Article does not require the production of reports, memoranda, or other internal documents made by the petitioner, law enforcement officers, or other persons acting on behalf of the petitioner in connection with the investigation or prosecution of the case or of statements made by witnesses or the petitioner to anyone acting on behalf of the petitioner.

(f) Nothing in this section prohibits a petitioner from making voluntary disclosures in the interest of justice.

" 7B-2301. Disclosure of evidence by juvenile.

(a) Names of Witnesses. -- Upon motion of the petitioner, the court shall order the juvenile to furnish to the petitioner the names of persons to be called as witnesses.

(b) Documents and Tangible Objects. -- If the court grants any relief sought by the juvenile under G.S. 7B-2300, upon motion of the petitioner, the court shall order the juvenile to permit the petitioner to inspect and copy books, papers, documents, photographs, motion pictures, mechanical or electronic recordings, tangible objects, or portions thereof which are within the possession, custody, or control of the juvenile and which the juvenile intends to introduce in evidence.

(c) Reports of Examinations and Tests. -- If the court grants any relief sought by the juvenile under G.S. 7B-2300, upon motion of the petitioner, the court shall order the juvenile to permit the petitioner to inspect and copy results of physical or mental examinations or of tests, measurements, or experiments made in connection with the case within the possession and control of the juvenile which the juvenile intends to introduce in evidence or which were prepared by a witness whom the juvenile intends to call if the results relate to the witness's testimony. In addition, upon motion of a petitioner, the court shall order the juvenile to permit the petitioner to inspect, examine, and test, subject to appropriate safeguards, any physical evidence or a sample of it if the juvenile intends to offer the evidence or tests or experiments made in connection with the evidence in the case.

" 7B-2302. Regulation of discovery; protective orders.

(a) Upon written motion of a party and a finding of good cause, the court may at any time order that discovery or inspection be denied, restricted, or deferred.

(b) The court may permit a party seeking relief under subsection (a) of this section to submit supporting affidavits or statements to the court for in camera inspection. If thereafter the court enters an order granting relief under subsection (a) of this section, the material submitted in camera must be available to the Court of Appeals in the event of an appeal.

" 7B-2303. Continuing duty to disclose.

If a party, subject to compliance with an order issued pursuant to this Article, discovers additional evidence prior to or during the hearing or decides to use additional evidence, and if the evidence is or may be subject to discovery or inspection under this Article, the party shall promptly notify the other party of the existence of the additional evidence or of the name of each additional witness.

"ARTICLE 24.

"Hearing Procedures.

" 7B-2400. Amendment of petition.

The court may permit a petition to be amended when the amendment does not change the nature of the offense alleged. If a motion to amend is allowed, the juvenile shall be given a reasonable opportunity to prepare a defense to the amended allegations.

" 7B-2401. Determination of incapacity to proceed; evidence; temporary commitment; temporary orders.

The provisions of G.S. 15A-1001, 15A-1002, and 15A-1003 apply to all cases in which a juvenile is alleged to be delinquent. No juvenile committed under this section may be placed in a situation where the juvenile will come in contact with adults committed for any purpose.

" 7B-2402. Open hearings.

All hearings authorized or required pursuant to this Subchapter shall be open to the public unless the court closes the hearing or part of the hearing for good cause, upon motion of a party or its own motion. If the court closes the hearing or part of the hearing to the public, the court may allow any victim, member of a victim's family, law enforcement officer, witness or any other person directly involved in the hearing to be present at the hearing.

In determining good cause to close a hearing or part of a hearing, the court shall consider the circumstances of the case, including, but not limited to, the following factors:

- (1) The nature of the allegations against the juvenile;
- (2) The age and maturity of the juvenile;
- (3) The benefit to the juvenile of confidentiality;
- (4) The benefit to the public of an open hearing; and
- (5) The extent to which the confidentiality of the juvenile's file will be compromised by an open hearing.

No hearing or part of a hearing shall be closed by the court if the juvenile requests that it remain open.

" 7B-2403. Adjudicatory hearing.

The adjudicatory hearing shall be held within a reasonable time in the district at the time and place the chief district court judge designates.

" 7B-2404. Participation of the prosecutor.

A prosecutor shall represent the State in contested delinquency hearings including first appearance, detention, probable cause, transfer, adjudicatory, dispositional, probation revocation, post-release supervision, and extended jurisdiction hearings.

" 7B-2405. Conduct of the adjudicatory hearing.

The adjudicatory hearing shall be a judicial process designed to determine whether the juvenile is undisciplined or delinquent. In the adjudicatory hearing, the court shall protect the following rights of the juvenile and the juvenile's parent, guardian, or custodian to assure due process of law:

- (1) The right to written notice of the facts alleged in the petition;
- (2) The right to counsel;
- (3) The right to confront and cross-examine witnesses;
- (4) The privilege against self-incrimination;
- (5) The right of discovery; and
- (6) All rights afforded adult offenders except the right to bail, the right of self-representation, and the right of trial by jury.

" 7B-2406. Continuances.

The court for good cause may continue the hearing for as long as is reasonably required to receive additional evidence, reports, or assessments that the court has requested, or other information needed in the best interests of the juvenile and to allow for a reasonable time for the parties to conduct expeditious discovery. Otherwise, continuances shall be granted only in extraordinary circumstances when necessary for the proper administration of justice or in the best interests of the juvenile.

" 7B-2407. When admissions by juvenile may be accepted.

(a) The court may accept an admission from a juvenile only after first addressing the juvenile personally and:

- (1) Informing the juvenile that the juvenile has a right to remain silent and that any statement the juvenile makes may be used against the juvenile;
- (2) Determining that the juvenile understands the nature of the charge;
- (3) Informing the juvenile that the juvenile has a right to deny the allegations;

- (4) Informing the juvenile that by the juvenile's admissions the juvenile waives the juvenile's right to be confronted by the witnesses against the juvenile;
- (5) Determining that the juvenile is satisfied with the juvenile's representation; and
- (6) Informing the juvenile of the most restrictive disposition on the charge.

(b) By inquiring of the prosecutor, the juvenile's attorney, and the juvenile personally, the court shall determine whether there were any prior discussions involving admissions, whether the parties have entered into any arrangement with respect to the admissions and the terms thereof, and whether any improper pressure was exerted. The court may accept an admission from a juvenile only after determining that the admission is a product of informed choice.

(c) The court may accept an admission only after determining that there is a factual basis for the admission. This determination may be based upon any of the following information: a statement of the facts by the prosecutor; a written statement of the juvenile; sworn testimony which may include reliable hearsay; or a statement of facts by the juvenile's attorney.

"§ 7B-2408. Rules of evidence.

If the juvenile denies the allegations of the petition, the court shall proceed in accordance with the rules of evidence applicable to criminal cases. In addition, no statement made by a juvenile to the intake counselor during the preliminary inquiry and evaluation process shall be admissible prior to the dispositional hearing.

" 7B-2409. Quantum of proof in adjudicatory hearing.

The allegations of a petition alleging the juvenile is delinquent shall be proved beyond a reasonable doubt. The allegations in a petition alleging undisciplined behavior shall be proved by clear and convincing evidence.

" 7B-2410. Record of proceedings.

All adjudicatory and dispositional hearings and hearings on probable cause and transfer to superior court shall be recorded by stenographic notes or by electronic or mechanical means. Records shall be reduced to a written transcript only when timely notice of appeal has been given. The court may order that other hearings be recorded.

" 7B-2411. Adjudication.

If the court finds that the allegations in the petition have been proved as provided in G.S. 7B-2409, the court shall so state. If the court finds that the allegations have not been proved, the court shall dismiss the petition with prejudice and the juvenile shall be released from secure or nonsecure custody if the juvenile is in custody.

" 7B-2412. Legal effect of adjudication of delinquency.

An adjudication that a juvenile is delinquent or commitment of a juvenile to the Office for placement in a training school shall neither be considered conviction of any criminal offense nor cause the juvenile to forfeit any citizenship rights.

" 7B-2413. Predisposition investigation and report.

The court shall proceed to the dispositional hearing upon receipt of the predisposition report. A risk and needs assessment, containing information

regarding the juvenile's social, medical, psychiatric, psychological, and educational history, as well as any factors indicating the probability of the juvenile committing further delinquent acts, shall be conducted for the juvenile and shall be attached to the predisposition report. In cases where no predisposition report is available and the court makes a written finding that a report is not needed, the court may proceed with the dispositional hearing. No predisposition report shall be submitted to or considered by the court prior to the completion of the adjudicatory hearing. The court shall permit the juvenile to inspect any predisposition report, including any attached risk and needs assessment, to be considered by the court in making the disposition unless the court determines that disclosure would seriously harm the juvenile's treatment or rehabilitation or would violate a promise of confidentiality. Opportunity to offer evidence in rebuttal shall be afforded the juvenile and the juvenile's parent, guardian, or custodian at the dispositional hearing. The court may order counsel not to disclose parts of the report to the juvenile or the juvenile's parent, guardian, or custodian if the court finds that disclosure would seriously harm the treatment or rehabilitation of the juvenile or would violate a promise of confidentiality given to a source of information.

" 7B-2414. When jeopardy attaches.

Jeopardy attaches in an adjudicatory hearing when the court begins to hear evidence.

"ARTICLE 25.

"Dispositions.

" 7B-2500. Purpose.

The purpose of dispositions in juvenile actions is to design an appropriate plan to meet the needs of the juvenile and to achieve the objectives of the State in exercising jurisdiction, including the protection of the public. The court should develop a disposition in each case that:

- (1) Promotes public safety;
- (2) Emphasizes accountability and responsibility of both the parent, guardian, or custodian and the juvenile for the juvenile's conduct; and
- (3) Provides the appropriate consequences, treatment, training, and rehabilitation to assist the juvenile toward becoming a nonoffending, responsible, and productive member of the community.

" 7B-2501. Dispositional hearing.

(a) The dispositional hearing may be informal, and the court may consider written reports or other evidence concerning the needs of the juvenile.

(b) The juvenile and the juvenile's parent, guardian, or custodian shall have an opportunity to present evidence, and they may advise the court concerning the disposition they believe to be in the best interests of the juvenile.

(c) In choosing among statutorily permissible dispositions, the court shall select the most appropriate disposition both in terms of kind and duration for the delinquent juvenile. Within the guidelines set forth in G.S. 7B-2508,

the court shall select a disposition that is designed to protect the public and to meet the needs and best interests of the juvenile, based upon:

- (1) The seriousness of the offense;
- (2) The need to hold the juvenile accountable;
- (3) The importance of protecting the public safety;
- (4) The degree of culpability indicated by the circumstances of the particular case; and
- (5) The rehabilitative and treatment needs of the juvenile indicated by a risk and needs assessment.

(d) The court may dismiss the case, or continue the case for no more than six months in order to allow the family an opportunity to meet the needs of the juvenile through more adequate home supervision, through placement in a private or specialized school or agency, through placement with a relative, or through some other plan approved by the court.

" 7B-2502. Evaluation and treatment of undisciplined and delinquent juveniles.

(a) In any case, the court may order that the juvenile be examined by a physician, psychiatrist, psychologist, or other qualified expert as may be needed for the court to determine the needs of the juvenile. In the case of a juvenile adjudicated delinquent for committing an offense that involves the possession, use, sale, or delivery of alcohol or a controlled substance, the court shall require the juvenile to be tested for the use of controlled substances or alcohol within 30 days of the adjudication. In the case of any juvenile adjudicated delinquent, the court may, if it deems it necessary, require the juvenile to be tested for the use of controlled substances or alcohol. The results of these initial tests conducted pursuant to this subsection shall be used for evaluation and treatment purposes only.

(b) Upon completion of the examination, the court shall conduct a hearing to determine whether the juvenile is in need of medical, surgical, psychiatric, psychological, or other evaluation or treatment and who should pay the cost of the evaluation or treatment. The county manager, or any other person who is designated by the chair of the board of county commissioners, of the county of the juvenile's residence shall be notified of the hearing, and allowed to be heard. If the court finds the juvenile to be in need of medical, surgical, psychiatric, psychological, or other evaluation or treatment, the court shall permit the parent, guardian, custodian, or other responsible persons to arrange for evaluation or treatment. If the parent, guardian, or custodian declines or is unable to make necessary arrangements, the court may order the needed evaluation or treatment, surgery, or care, and the court may order the parent to pay the cost of the care pursuant to Article 27 of this Chapter. If the court finds the parent is unable to pay the cost of evaluation or treatment, the court shall order the county to arrange for evaluation or treatment of the juvenile and to pay for the cost of the evaluation or treatment. The county department of social services shall recommend the facility that will provide the juvenile with evaluation or treatment.

(c) If the court believes, or if there is evidence presented to the effect that the juvenile is mentally ill or is developmentally disabled, the court shall refer the juvenile to the area mental health, developmental disabilities, and substance abuse services director for appropriate action. A juvenile shall not

be committed directly to a State hospital or mental retardation center; and orders purporting to commit a juvenile directly to a State hospital or mental retardation center except for an examination to determine capacity to proceed shall be void and of no effect. The area mental health, developmental disabilities, and substance abuse director shall be responsible for arranging an interdisciplinary evaluation of the juvenile and mobilizing resources to meet the juvenile's needs. If institutionalization is determined to be the best service for the juvenile, admission shall be with the voluntary consent of the parent, guardian, or custodian. If the parent, guardian, or custodian refuses to consent to a mental hospital or retardation center admission after such institutionalization is recommended by the area mental health, developmental disabilities, and substance abuse director, the signature and consent of the court may be substituted for that purpose. In all cases in which a regional mental hospital refuses admission to a juvenile referred for admission by the court and an area mental health, developmental disabilities, and substance abuse director or discharges a juvenile previously admitted on court referral prior to completion of the juvenile's treatment, the hospital shall submit to the court a written report setting out the reasons for denial of admission or discharge and setting out the juvenile's diagnosis, indications of mental illness, indications of need for treatment, and a statement as to the location of any facility known to have a treatment program for the juvenile in question.

" 7B-2503. Dispositional alternatives for undisciplined juveniles.

The following alternatives for disposition shall be available to the court exercising jurisdiction over a juvenile who has been adjudicated undisciplined. The court may combine any of the applicable alternatives when the court finds it to be in the best interests of the juvenile:

- (1) In the case of any juvenile who needs more adequate care or supervision or who needs placement, the judge may:
 - a. Require that the juvenile be supervised in the juvenile's own home by a department of social services in the juvenile's county of residence, a court counselor, or other personnel as may be available to the court, subject to conditions applicable to the parent, guardian, or custodian or the juvenile as the judge may specify; or
 - b. Place the juvenile in the custody of a parent, guardian, custodian, relative, private agency offering placement services, or some other suitable person; or
 - c. Place the juvenile in the custody of a department of social services in the county of the juvenile's residence, or in the case of a juvenile who has legal residence outside the State, in the physical custody of a department of social services in the county where the juvenile is found so that agency may return the juvenile to the responsible authorities in the juvenile's home state. The director may, unless otherwise ordered by the judge, arrange for, provide, or consent to, needed routine or emergency medical or surgical care or treatment. In the case where the parent is unknown, unavailable, or unable to act on behalf of the juvenile or juveniles, the director may,

unless otherwise ordered by the judge, arrange for, provide or consent to any psychiatric, psychological, educational, or other remedial evaluations or treatment for the juvenile placed by a judge or the judge's designee in the custody or physical custody of a county department of social services under the authority of this or any other Chapter of the General Statutes. Prior to exercising this authority, the director shall make reasonable efforts to obtain consent from a parent, guardian, or custodian of the affected juvenile. If the director cannot obtain consent, the director shall promptly notify the parent, guardian, or custodian that care or treatment has been provided and shall give the parent, guardian, or custodian frequent status reports on the circumstances of the juvenile. Upon request of a parent, guardian, or custodian of the affected juvenile, the results or records of the aforementioned evaluations, findings, or treatment shall be made available to the parent, guardian, or custodian by the director unless prohibited by G.S. 122C-53(d).

- (2) Place the juvenile under the protective supervision of a court counselor for a period of up to three months, with an extension of an additional three months in the discretion of the court.
- (3) Excuse the juvenile from compliance with the compulsory school attendance law when the court finds that suitable alternative plans can be arranged by the family through other community resources for one of the following:
 - a. An education related to the needs or abilities of the juvenile including vocational education or special education;
 - b. A suitable plan of supervision or placement; or
 - c. Some other plan that the court finds to be in the best interests of the juvenile.

" 7B-2504. Conditions of protective supervision for undisciplined juveniles.

The court may place a juvenile on protective supervision pursuant to G.S. 7B-2503 so that the court counselor may (i) assist the juvenile in securing social, medical, and educational services and (ii) visit and work with the family as a unit to ensure the juvenile is provided proper supervision and care. The court may impose any combination of the following conditions of protective supervision that are related to the needs of the juvenile, including:

- (1) That the juvenile shall remain on good behavior and not violate any laws;
- (2) That the juvenile attend school regularly;
- (3) That the juvenile maintain passing grades in up to four courses during each grading period and meet with the court counselor and a representative of the school to make a plan for how to maintain those passing grades;
- (4) That the juvenile not associate with specified persons or be in specified places;
- (5) That the juvenile abide by a prescribed curfew;
- (6) That the juvenile report to a court counselor as often as required by a court counselor;

- (7) That the juvenile be employed regularly if not attending school; and
- (8) That the juvenile satisfy any other conditions determined appropriate by the court.

" 7B-2505. Contempt of court for undisciplined juveniles.

Upon motion of the court counselor or on the court's own motion, the court may issue an order directing a juvenile who has been adjudicated undisciplined to appear and show cause why the juvenile should not be held in contempt for willfully failing to comply with an order of the court. The first time the juvenile is held in contempt, the court may order the juvenile confined in an approved detention facility for a period not to exceed 24 hours. The second time the juvenile is held in contempt, the court may order the juvenile confined in an approved detention facility for a period not to exceed three days. The third time and all subsequent times the juvenile is held in contempt, the court may order the juvenile confined in an approved detention facility for a period not to exceed five days. The timing of any confinement under this section shall be determined by the court in its discretion. In no event shall a juvenile held in contempt pursuant to this section be confined for more than 14 days in one 12-month period.

" 7B-2506. Dispositional alternatives for delinquent juveniles.

The court exercising jurisdiction over a juvenile who has been adjudicated delinquent may use the following alternatives in accordance with the dispositional structure set forth in G.S. 7B-2508:

- (1) In the case of any juvenile who needs more adequate care or supervision or who needs placement, the judge may:
 - a. Require that a juvenile be supervised in the juvenile's own home by the department of social services in the juvenile's county, a court counselor, or other personnel as may be available to the court, subject to conditions applicable to the parent, guardian, or custodian or the juvenile as the judge may specify; or
 - b. Place the juvenile in the custody of a parent, guardian, custodian, relative, private agency offering placement services, or some other suitable person; or
 - c. Place the juvenile in the custody of the department of social services in the county of his residence, or in the case of a juvenile who has legal residence outside the State, in the physical custody of a department of social services in the county where the juvenile is found so that agency may return the juvenile to the responsible authorities in the juvenile's home state. The director may, unless otherwise ordered by the judge, arrange for, provide, or consent to, needed routine or emergency medical or surgical care or treatment. In the case where the parent is unknown, unavailable, or unable to act on behalf of the juvenile or juveniles, the director may, unless otherwise ordered by the judge, arrange for, provide, or consent to any psychiatric, psychological, educational, or other remedial evaluations or treatment for the juvenile placed by a judge or his designee in the custody or physical custody

of a county department of social services under the authority of this or any other Chapter of the General Statutes. Prior to exercising this authority, the director shall make reasonable efforts to obtain consent from a parent, guardian, or custodian of the affected juvenile. If the director cannot obtain consent, the director shall promptly notify the parent, guardian, or custodian that care or treatment has been provided and shall give the parent, guardian, or custodian frequent status reports on the circumstances of the juvenile. Upon request of a parent, guardian, or custodian of the affected juvenile, the results or records of the aforementioned evaluations, findings, or treatment shall be made available to the parent, guardian, or custodian by the director unless prohibited by G.S. 122C-53(d).

- (2) Excuse the juvenile from compliance with the compulsory school attendance law when the court finds that suitable alternative plans can be arranged by the family through other community resources for one of the following:

 - a. An education related to the needs or abilities of the juvenile including vocational education or special education;
 - b. A suitable plan of supervision or placement; or
 - c. Some other plan that the court finds to be in the best interests of the juvenile.
- (3) Order the juvenile to cooperate with a community-based program, an intensive substance abuse treatment program, or a residential or nonresidential treatment program. Participation in the programs shall not exceed 12 months.
- (4) Require restitution, full or partial, up to five hundred dollars (\$500.00), payable within a 12-month period to any person who has suffered loss or damage as a result of the offense committed by the juvenile. The court may determine the amount, terms, and conditions of the restitution. If the juvenile participated with another person or persons, all participants should be jointly and severally responsible for the payment of restitution; however, the court shall not require the juvenile to make restitution if the juvenile satisfies the court that the juvenile does not have, and could not reasonably acquire, the means to make restitution.
- (5) Impose a fine related to the seriousness of the juvenile's offense. If the juvenile has the ability to pay the fine, it shall not exceed the maximum fine for the offense if committed by an adult.
- (6) Order the juvenile to perform up to 100 hours supervised community service consistent with the juvenile's age, skill, and ability, specifying the nature of the work and the number of hours required. The work shall be related to the seriousness of the juvenile's offense and in no event may the obligation to work exceed 12 months.
- (7) Order the juvenile to participate in the victim-offender reconciliation program.

- (8) Place the juvenile on probation under the supervision of a court counselor, as specified in G.S. 7B-2509.
- (9) Order that the juvenile shall not be licensed to operate a motor vehicle in the State of North Carolina for as long as the court retains jurisdiction over the juvenile or for any shorter period of time. The clerk of court shall notify the Division of Motor Vehicles of that order.
- (10) Impose a curfew upon the juvenile.
- (11) Order that the juvenile not associate with specified persons or be in specified places.
- (12) Impose confinement on an intermittent basis in an approved detention facility. Confinement shall be limited to not more than five 24-hour periods, the timing of which is determined by the court in its discretion.
- (13) Order the juvenile to cooperate with placement in a wilderness program.
- (14) Order the juvenile to cooperate with placement in a residential treatment facility, an intensive nonresidential treatment program, an intensive substance abuse program, or in a group home other than a multipurpose group home operated by a State agency.
- (15) Place the juvenile on intensive probation under the supervision of a court counselor.
- (16) Order the juvenile to cooperate with a supervised day program requiring the juvenile to be present at a specified place for all or part of every day or of certain days. The court also may require the juvenile to comply with any other reasonable conditions specified in the dispositional order that are designed to facilitate supervision.
- (17) Order the juvenile to participate in a regimented training program.
- (18) Order the juvenile to submit to house arrest.
- (19) Suspend imposition of a more severe, statutorily permissible disposition with the provision that the juvenile meet certain conditions agreed to by the juvenile and specified in the dispositional order. The conditions shall not exceed the allowable dispositions for the level under which disposition is being imposed.
- (20) Order that the juvenile be confined in an approved juvenile detention facility for a term of up to 14 24-hour periods, which confinement shall not be imposed consecutively with intermittent confinement pursuant to subdivision (12) of this section at the same dispositional hearing. The timing of this confinement shall be determined by the court in its discretion.
- (21) Order the residential placement of a juvenile in a multipurpose group home operated by a State agency.
- (22) Require restitution of more than five hundred dollars (\$500.00), full or partial, payable within a 12-month period to any person who has suffered loss or damage as a result of an offense committed by the juvenile. The court may determine the amount,

terms, and conditions of restitution. If the juvenile participated with another person or persons, all participants should be jointly and severally responsible for the payment of the restitution; however, the court shall not require the juvenile to make restitution if the juvenile satisfies the court that the juvenile does not have, and could not reasonably acquire, the means to make restitution.

- (23) Order the juvenile to perform supervised community service of not less than 100 hours and not more than 200 hours, consistent with the juvenile's age, skill, and ability, specifying the nature of work and the number of hours required. The work shall be related to the seriousness of the juvenile's offense.
- (24) Commit the juvenile to the Office for placement in a training school in accordance with G.S. 7B-2512 for a period of not less than six months.

" 7B-2507. Delinquency history levels.

(a) Generally. -- The delinquency history level for a delinquent juvenile is determined by calculating the sum of the points assigned to each of the juvenile's prior adjudications and to the juvenile's probation status, if any, that the court finds to have been proved in accordance with this section.

(b) Points. -- Points are assigned as follows:

- (1) For each prior adjudication of a Class A through E felony offense, 4 points.
- (2) For each prior adjudication of a Class F through I felony offense or Class A1 misdemeanor offense, 2 points.
- (3) For each prior adjudication of a Class 1, 2, or 3 misdemeanor offense, 1 point.
- (4) If the juvenile was on probation at the time of offense, 2 points.

(c) Delinquency History Levels. -- The delinquency history levels are:

- (1) Low -- No more than 1 point.
- (2) Medium -- At least 2, but not more than 3 points.
- (3) High -- At least 4 points.

In determining the delinquency history level, the classification of a prior offense is the classification assigned to that offense at the time the juvenile committed the offense for which disposition is being ordered.

(d) Multiple Prior Adjudications Obtained in One Court Session. -- For purposes of determining the delinquency history level, if a juvenile is adjudicated delinquent for more than one offense in a single session of district court, only the adjudication for the offense with the highest point total is used.

(e) Classification of Prior Adjudications From Other Jurisdictions. -- Except as otherwise provided in this subsection, an adjudication occurring in a jurisdiction other than North Carolina is classified as a Class I felony if the jurisdiction in which the offense occurred classifies the offense as a felony, or is classified as a Class 3 misdemeanor if the jurisdiction in which the offense occurred classifies the offense as a misdemeanor. If the juvenile proves by the preponderance of the evidence that an offense classified as a felony in the other jurisdiction is substantially similar to an offense that is a misdemeanor in North Carolina, the conviction is treated as that class of

misdemeanor for assigning delinquency history level points. If the State proves by the preponderance of the evidence that an offense classified as either a misdemeanor or a felony in the other jurisdiction is substantially similar to an offense in North Carolina that is classified as a Class I felony or higher, the conviction is treated as that class of felony for assigning delinquency history level points. If the State proves by the preponderance of the evidence that an offense classified as a misdemeanor in the other jurisdiction is substantially similar to an offense classified as a Class A1 misdemeanor in North Carolina, the adjudication is treated as a Class A1 misdemeanor for assigning delinquency history level points.

(f) Proof of Prior Adjudications. -- A prior adjudication shall be proved by any of the following methods:

- (1) Stipulation of the parties.
- (2) An original or copy of the court record of the prior adjudication.
- (3) A copy of records maintained by the Division of Criminal Information or by the Office.
- (4) Any other method found by the court to be reliable.

The State bears the burden of proving, by a preponderance of the evidence, that a prior adjudication exists and that the juvenile before the court is the same person as the juvenile named in the prior adjudication. The original or a copy of the court records or a copy of the records maintained by the Division of Criminal Information or of the Office, bearing the same name as that by which the juvenile is charged, is prima facie evidence that the juvenile named is the same person as the juvenile before the court, and that the facts set out in the record are true. For purposes of this subsection, 'a copy' includes a paper writing containing a reproduction of a record maintained electronically on a computer or other data processing equipment, and a document produced by a facsimile machine. The prosecutor shall make all feasible efforts to obtain and present to the court the juvenile's full record. Evidence presented by either party at trial may be utilized to prove prior adjudications. If asked by the juvenile, the prosecutor shall furnish the juvenile's prior adjudications to the juvenile within a reasonable time sufficient to allow the juvenile to determine if the record available to the prosecutor is accurate.

" 7B-2508. Dispositional limits for each class of offense and delinquency history level.

(a) Offense Classification. -- The offense classifications are as follows:

- (1) Violent -- Adjudication of a Class A through E felony offense;
- (2) Serious -- Adjudication of a Class F through I felony offense or a Class A1 misdemeanor;
- (3) Minor -- Adjudication of a Class 1, 2, or 3 misdemeanor.

(b) Delinquency History Levels. -- A delinquency history level shall be determined for each delinquent juvenile as provided in G.S. 7B-2507.

(c) Level 1 -- Community Disposition. -- A court exercising jurisdiction over a juvenile who has been adjudicated delinquent and for whom the dispositional chart in subsection (f) of this section prescribes a Level 1 disposition may provide for evaluation and treatment under G.S. 7B-2502 and for any of the dispositional alternatives contained in subdivisions (1) through (13) of G.S. 7B-2506. In determining which dispositional

alternative is appropriate, the court shall consider the needs of the juvenile as indicated by the risk and needs assessment contained in the predisposition report, the appropriate community resources available to meet those needs, and the protection of the public.

(d) Level 2 -- Intermediate Disposition. -- A court exercising jurisdiction over a juvenile who has been adjudicated delinquent and for whom the dispositional chart in subsection (f) of this section prescribes a Level 2 disposition may provide for evaluation and treatment under G.S. 7B-2502 and for any of the dispositional alternatives contained in subdivisions (1) through (23) of G.S. 7B-2506, but shall provide for at least one of the intermediate dispositions authorized in subdivisions (13) through (23) of G.S. 7B-2506. However, notwithstanding any other provision of this section, a court may impose a Level 3 disposition if the juvenile has previously received a Level 3 disposition in a prior juvenile action. In determining which dispositional alternative is appropriate, the court shall consider the needs of the juvenile as indicated by the risk and needs assessment contained in the predisposition report, the appropriate community resources available to meet those needs, and the protection of the public.

(e) Level 3 -- Commitment. -- A court exercising jurisdiction over a juvenile who has been adjudicated delinquent and for whom the dispositional chart in subsection (f) of this section prescribes a Level 3 disposition shall commit the juvenile to the Office for placement in a training school in accordance with G.S. 7B-2506(24). However, a court may impose a Level 2 disposition rather than a Level 3 disposition if the court submits written findings on the record that substantiate extraordinary needs on the part of the offending juvenile.

(f) Dispositions for Each Class of Offense and Delinquency History Level; Disposition Chart Described. -- The authorized disposition for each class of offense and delinquency history level is as specified in the chart below. Delinquency history levels are indicated horizontally on the top of the chart. Classes of offense are indicated vertically on the left side of the chart. Each cell on the chart indicates which of the dispositional levels described in subsections (c) through (e) of this section are prescribed for that combination of offense classification and delinquency history level:

<u>OFFENSE</u>	<u>DELINQUENCY HISTORY</u>		
	<u>LOW</u>	<u>MEDIUM</u>	<u>HIGH</u>
<u>VIOLENT</u>	<u>Level 2 or 3</u>	<u>Level 3</u>	<u>Level 3</u>
<u>SERIOUS</u>	<u>Level 1 or 2</u>	<u>Level 2</u>	<u>Level 2 or 3</u>
<u>MINOR</u>	<u>Level 1</u>	<u>Level 1 or 2</u>	<u>Level 2.</u>

(g) Notwithstanding subsection (f) of this section, a juvenile who has been adjudicated for a minor offense may be committed to a Level 3 disposition if the juvenile has been adjudicated of four or more prior offenses. For purposes of determining the number of prior offenses under

this subsection, each successive offense is one that was committed after adjudication of the preceding offense.

(h) If a juvenile is adjudicated of more than one offense during a session of juvenile court, the court shall consolidate the offenses for disposition and impose a single disposition for the consolidated offenses. The disposition shall be specified for the class of offense and delinquency history level of the most serious offense.

" 7B-2509. Conditions of probation; violation of probation.

(a) In any case where a juvenile is placed on probation pursuant to G.S. 7B-2506(8), the court counselor shall have the authority to visit the juvenile where the juvenile resides. The court may impose conditions of probation that are related to the needs of the juvenile and that are reasonably necessary to ensure that the juvenile will lead a law-abiding life, including:

- (1) That the juvenile shall remain on good behavior.
- (2) That the juvenile shall not violate any laws.
- (3) That the juvenile shall not violate any reasonable and lawful rules of a parent, guardian, or custodian.
- (4) That the juvenile attend school regularly.
- (5) That the juvenile maintain passing grades in up to four courses during each grading period and meet with the court counselor and a representative of the school to make a plan for how to maintain those passing grades.
- (6) That the juvenile not associate with specified persons or be in specified places.
- (7) That the juvenile:
 - a. Refrain from use or possession of any controlled substance included in any schedule of Article 5 of Chapter 90 of the General Statutes, the Controlled Substances Act;
 - b. Refrain from use or possession of any alcoholic beverage regulated under Chapter 18B of the General Statutes; and
 - c. Submit to random drug testing.
- (8) That the juvenile abide by a prescribed curfew.
- (9) That the juvenile submit to a warrantless search at reasonable times.
- (10) That the juvenile possess no firearm, explosive device, or other deadly weapon.
- (11) That the juvenile report to a court counselor as often as required by the court counselor.
- (12) That the juvenile make specified financial restitution or pay a fine in accordance with G.S. 7B-2506(4), (5), and (22).
- (13) That the juvenile be employed regularly if not attending school.
- (14) That the juvenile satisfy any other conditions determined appropriate by the court.

(b) In addition to the regular conditions of probation specified in subsection (a) of this section, the court may, at a dispositional hearing or any subsequent hearing, order the juvenile to comply, if directed to comply by the chief court counselor, with one or more of the following conditions:

- (1) Perform up to 20 hours of community service;
- (2) Submit to substance abuse monitoring and treatment;

- (3) Participate in a life skills or an educational skills program administered by the Office;
- (4) Cooperate with electronic monitoring; and
- (5) Cooperate with intensive supervision.

However, the court shall not give the chief court counselor discretion to impose the conditions of either subsection (4) or (5) of this section unless the juvenile is subject to Level 2 dispositions pursuant to G.S. 7B-2508 or subsection (d) of this section.

(c) An order of probation shall remain in force for a period not to exceed one year from the date entered. Prior to expiration of an order of probation, the court may extend it for an additional period of one year after a hearing, if the court finds that the extension is necessary to protect the community or to safeguard the welfare of the juvenile.

(d) On motion of the court counselor or the juvenile, or on the court's own motion, the court may review the progress of any juvenile on probation at any time during the period of probation or at the end of probation. The conditions or duration of probation may be modified only as provided in this Subchapter and only after notice and a hearing.

(e) If the court, after notice and a hearing, finds by the greater weight of the evidence that the juvenile has violated the conditions of probation set by the court, the court may continue the original conditions of probation, modify the conditions of probation, or, except as provided in subsection (f) of this section, order a new disposition at the next higher level on the disposition chart in G.S. 7B-2508. In the court's discretion, part of the new disposition may include an order of confinement in a secure juvenile detention facility for up to twice the term authorized by G.S. 7B-2508.

(f) A court shall not order a Level 3 disposition for violation of the conditions of probation by a juvenile adjudicated delinquent for an offense classified as minor under G.S. 7B-2508.

" 7B-2510. Termination of probation.

At the end of or at any time during probation, the court may terminate probation by written order upon finding that there is no further need for supervision. The finding and order terminating probation may be entered in chambers in the absence of the juvenile and may be based on a report from the court counselor or, at the election of the court, the order may be entered with the juvenile present after notice and a hearing.

" 7B-2511. Dispositional order.

The dispositional order shall be in writing and shall contain appropriate findings of fact and conclusions of law. The court shall state with particularity, both orally and in the written order of disposition, the precise terms of the disposition including the kind, duration, and the person who is responsible for carrying out the disposition and the person or agency in whom custody is vested.

" 7B-2512. Commitment of delinquent juvenile to Office.

(a) Pursuant to G.S. 7B-2506 and G.S. 7B-2508, the court may commit a delinquent juvenile who is at least 10 years of age to the Office for placement in a training school. Commitment shall be for an indefinite term of at least six months. In no event shall the term exceed:

- (1) The twenty-first birthday of the juvenile if the juvenile has been committed to the Office for an offense that would be first-degree murder pursuant to G.S. 14-17, first-degree rape pursuant to G.S. 14-27.2, or first-degree sexual offense pursuant to G.S. 14-27.4 if committed by an adult;
- (2) The nineteenth birthday of the juvenile if the juvenile has been committed to the Office for an offense that would be a Class B1, B2, C, D, or E felony if committed by an adult, other than an offense set forth in subdivision (1) of this subsection; or
- (3) The eighteenth birthday of the juvenile if the juvenile has been committed to the Office for an offense other than an offense that would be a Class A, B1, B2, C, D, or E felony if committed by an adult.

No juvenile shall be committed to a training school beyond the minimum six-month commitment for a period of time in excess of the maximum term of imprisonment for which an adult in prior record level VI for felonies or in prior conviction level III for misdemeanors could be sentenced for the same offense, except when the Office pursuant to G.S. 7B-2514 determines that the juvenile's commitment needs to be continued for an additional period of time to continue care or treatment under the plan of care or treatment developed under subsection (f) of this section. At the time of commitment to a training school, the court shall determine the maximum period of time the juvenile may remain committed before a determination must be made by the Office pursuant to G.S. 7B-2514 and shall notify the juvenile of that determination.

(b) The court may commit a juvenile to a definite term of not less than six months and not more than two years if the court finds that the juvenile is 14 years of age or older, has been previously adjudicated delinquent for two or more felony offenses, and has been previously committed to a training school.

(c) The chief court counselor shall have the responsibility for transporting the juvenile to the training school designated by the Office. The juvenile shall be accompanied to the training school by a person of the same sex.

(d) The chief court counselor shall ensure that the records requested by the Office accompany the juvenile upon transportation for admittance to a training school or, if not obtainable at the time of admission, are sent to the training school within 15 days of the admission. If records requested by the Office for admission do not exist, to the best knowledge of the chief court counselor, the chief court counselor shall so stipulate in writing to the training school. If such records do exist, but the chief court counselor is unable to obtain copies of them, a district court may order that the records from public agencies be made available to the training school. Records that are confidential by law shall remain confidential and the Office shall be bound by the specific laws governing the confidentiality of these records. All records shall be used in a manner consistent with the best interests of the juvenile.

(e) A commitment order accompanied by information requested by the Office shall be forwarded to the Office. The Office shall place the juvenile

in the training school that would best provide for the juvenile's needs and shall notify the committing court. The Office may assign a juvenile committed for delinquency to any institution or other program of the Office or licensed by the Office, which program is appropriate to the needs of the juvenile.

(f) When the court commits a juvenile to the Office for placement in a training school, the Office shall prepare a plan for care or treatment within 30 days after assuming custody of the juvenile.

(g) Commitment of a juvenile to the Office for placement in a training school does not terminate the court's continuing jurisdiction over the juvenile and the juvenile's parent, guardian, or custodian. Commitment of a juvenile to the Office for placement in a training school transfers only physical custody of the juvenile. Legal custody remains with the parent, guardian, custodian, agency, or institution in whom it was vested.

(h) Pending placement of a juvenile with the Office, the court may house a juvenile who has been adjudicated guilty of a delinquent act that would be a Class A, B1, B2, C, D, or E felony if committed by an adult in a holdover facility up to 72 hours if the court, based on the information provided by the court counselor, determines that no acceptable alternative placement is available and the protection of the public requires that the juvenile be housed in a holdover facility.

(i) A juvenile who is committed to the Office for placement in a training school shall be tested for the use of controlled substances or alcohol. The results of this initial test shall be incorporated into the plan of care as provided in subsection (f) of this section and used for evaluation and treatment purposes only.

(j) When a juvenile is committed to the Office for placement in a training school for an offense that would have been a Class A or B1 felony if committed by an adult, the chief court counselor shall notify the victim and members of the victim's immediate family that the victim, or the victim's immediate family members may request in writing to be notified in advance of the juvenile's scheduled release date in accordance with G.S. 7B-2513(d). "*7B-2513. Post-release supervision planning; release.*

(a) The Office shall be responsible for evaluation of the progress of each juvenile at least once every six months as long as the juvenile remains in the care of the Office. Any determination that the juvenile should remain in the care of the Office for an additional period of time shall be based on the Office's determination that the juvenile requires additional treatment or rehabilitation pursuant to G.S. 7B-2514. If the Office determines that a juvenile is ready for release, the Office shall initiate a post-release supervision planning process. The post-release supervision planning process shall be defined by rules and regulations of the Office, but shall include the following:

- (1) Written notification shall be given to the court that ordered commitment.
- (2) A post-release supervision planning conference shall be held involving as many as possible of the following: the juvenile, the juvenile's parent, guardian, or custodian, court counselors who have supervised the juvenile on probation or will supervise the

juvenile on post-release supervision, and staff of the facility that found the juvenile ready for release. The planning conference shall include personal contact and evaluation rather than telephonic notification.

- (3) The planning conference participants shall consider, based on the individual needs of the juvenile and pursuant to rules adopted by the Office, placement of the juvenile in any program under the auspices of the Office, including the juvenile court services programs that, in the judgment of the Office, would be appropriate transitional placement, pending release under G.S. 7B-2512.

(b) The Office shall develop the plan in writing and base the terms on the needs of the juvenile and the protection of the public. Every plan shall require the juvenile to complete at least 90 days, but not more than one year, of post-release supervision.

(c) The Office shall release a juvenile under a plan of post-release supervision at least 90 days prior to:

- (1) Completion of the juvenile's definite term of commitment; or
- (2) The juvenile's twenty-first birthday if the juvenile has been committed to the Office for an offense that would be first-degree murder pursuant to G.S. 14-17, first-degree rape pursuant to G.S. 14-27.2, or first-degree sexual offense pursuant to G.S. 14-27.4 if committed by an adult.
- (3) The juvenile's nineteenth birthday if the juvenile has been committed to the Office for an offense that would be a Class B1, B2, C, D, or E felony if committed by an adult, other than an offense set forth in G.S. 7B-1602(a).
- (4) The juvenile's eighteenth birthday if the juvenile has been committed to the Office for an offense other than an offense that would be a Class A, B1, B2, C, D, or E felony if committed by an adult.

(d) Notwithstanding Articles 30 and 31 of Subchapter III of this Chapter, at least 45 days before releasing to post-release supervision a juvenile who was committed for a Class A or B1 felony, the Office shall notify, by first-class mail at the last known address:

- (1) The juvenile;
- (2) The juvenile's parent, guardian, or custodian;
- (3) The district attorney of the district where the juvenile was adjudicated;
- (4) The head of the enforcement agency that took the juvenile into custody; and
- (5) The victim and any of the victim's immediate family members who have requested in writing to be notified.

The notification shall include only the juvenile's name, offense, date of commitment, and date proposed for release. A copy of the notice shall be sent to the appropriate clerk of superior court for placement in the juvenile's court file.

(e) The Office may release a juvenile under an indefinite commitment to post-release supervision only after the juvenile has been committed to the Office for placement in a training school for a period of at least six months.

(f) A juvenile committed to the Office for placement in a training school for a definite term shall receive credit toward that term for the time the juvenile spends on post-release supervision.

(g) A juvenile on post-release supervision shall be supervised by a court counselor. Post-release supervision shall be terminated by order of the court.

" 7B-2514. Notification of extended commitment; plan of treatment.

(a) If the Office does not intend to release the juvenile prior to the juvenile's eighteenth birthday, or if the Office determines that the juvenile's commitment should be continued beyond the maximum commitment period as set forth in G.S. 7B-2512(a), the Office shall notify the juvenile and the juvenile's parent, guardian, or custodian in writing at least 30 days in advance of the juvenile's eighteenth birthday or the end of the maximum commitment period, of the additional specific commitment period proposed by the Office, the basis for extending the commitment period, and the plan for future care or treatment.

(b) The Office shall modify the plan of care or treatment developed pursuant to G.S. 7B-2512(f) to specify (i) the specific goals and outcomes that require additional time for care or treatment of the juvenile; (ii) the specific course of treatment or care that will be implemented to achieve the established goals and outcomes; and (iii) the efforts that will be taken to assist the juvenile's family in creating an environment that will increase the likelihood that the efforts to treat and rehabilitate the juvenile will be successful upon release. If appropriate, the Office may place the juvenile in a setting other than a training school.

(c) The juvenile and the juvenile's parent, guardian, or custodian may request a review by the court of the Office's decision to extend the juvenile's commitment beyond the juvenile's eighteenth birthday or maximum commitment period, in which case the court shall conduct a review hearing. The court may modify the Office's decision and the juvenile's maximum commitment period. If the juvenile or the juvenile's parent, guardian, or custodian does not request a review of the Office's decision, the Office's decision shall become the juvenile's new maximum commitment period.

" 7B-2515. Revocation of post-release supervision.

On motion of the court counselor providing post-release supervision or motion of the juvenile, or on the court's own motion, and after notice, the court may hold a hearing to review the progress of any juvenile on post-release supervision at any time during the period of post-release supervision. With respect to any hearing involving allegations that the juvenile has violated the terms of post-release supervision, the juvenile:

- (1) Shall have reasonable notice in writing of the nature and content of the allegations in the motion, including notice that the purpose of the hearing is to determine whether the juvenile has violated the terms of post-release supervision to the extent that post-release supervision should be revoked;
- (2) Shall be represented by an attorney at the hearing;

- (3) Shall have the right to confront and cross-examine witnesses; and
- (4) May admit, deny, or explain the violation alleged and may present proof, including affidavits or other evidence, in support of the juvenile's contentions. A record of the proceeding shall be made and preserved in the juvenile's record.

If the court determines by the greater weight of the evidence that the juvenile has violated the terms of post-release supervision, the court may revoke the post-release supervision or make any other disposition authorized by this Subchapter.

If the court revokes post-release supervision, the juvenile shall be returned to the Office for placement in a training school for an indefinite term of at least 90 days, provided, however, that no juvenile shall remain committed to the Office for placement in a training school past:

- (1) The juvenile's twenty-first birthday if the juvenile has been committed to the Office for an offense that would be first-degree murder pursuant to G.S. 14-17, first-degree rape pursuant to G.S. 14-27.2, or first-degree sexual offense pursuant to G.S. 14-27.4 if committed by an adult.
- (2) The juvenile's nineteenth birthday if the juvenile has been committed to the Office for an offense that would be a Class B1, B2, C, D, or E felony if committed by an adult, other than an offense set forth in G.S. 7B-1602(a).
- (3) The juvenile's eighteenth birthday if the juvenile has been committed to the Office for an offense other than an offense that would be a Class A, B1, B2, C, D, or E felony if committed by an adult.

" 7B-2516. Transfer authority of Governor.

The Governor may order transfer of any person less than 18 years of age from any jail or penal facility of the State to one of the residential facilities operated by the Office in appropriate circumstances, provided the Governor shall consult with the Office concerning the feasibility of the transfer in terms of available space, staff, and suitability of program.

When an inmate, committed to the Department of Correction, is transferred by the Governor to a residential program operated by the Office, the Office may release the juvenile based on the needs of the juvenile and the best interests of the State. Transfer shall not divest the probation or parole officer of the officer's responsibility to supervise the inmate on release.

"ARTICLE 26.

"Modification and Enforcement of Dispositional Orders; Appeals.

" 7B-2600. Authority to modify or vacate.

(a) Upon motion in the cause or petition, and after notice, the court may conduct a review hearing to determine whether the order of the court is in the best interests of the juvenile, and the court may modify or vacate the order in light of changes in circumstances or the needs of the juvenile.

(b) In a case of delinquency, the court may reduce the nature or the duration of the disposition on the basis that it was imposed in an illegal manner or is unduly severe with reference to the seriousness of the offense,

the culpability of the juvenile, or the dispositions given to juveniles convicted of similar offenses.

(c) In any case where the court finds the juvenile to be delinquent or undisciplined, the jurisdiction of the court to modify any order or disposition made in the case shall continue (i) during the minority of the juvenile, (ii) until the juvenile reaches the age of 19 years if the juvenile has been adjudicated delinquent and committed to the Office for an offense that would be a Class B1, B2, C, D, or E felony if committed by an adult, other than an offense set forth in G.S. 7B-1602(a), (iii) until the juvenile reaches the age of 21 years if the juvenile has been adjudicated delinquent and committed for an offense that would be first-degree murder pursuant to G.S. 14-17, first-degree rape pursuant to G.S. 14-27.2, or first-degree sexual offense pursuant to G.S. 14-27.4 if committed by an adult, or (iv) until terminated by order of the court.

" 7B-2601. Request for modification for lack of suitable services.

If the Office finds that any juvenile committed to the Office's care is not suitable for its program, the Office may make a motion in the cause so that the court may make an alternative disposition that is consistent with G.S. 7B-2508.

" 7B-2602. Right to appeal.

Upon motion of a proper party as defined in G.S. 7B-2604, review of any final order of the court in a juvenile matter under this Article shall be before the Court of Appeals. Notice of appeal shall be given in open court at the time of the hearing or in writing within 10 days after entry of the order. However, if no disposition is made within 60 days after entry of the order, written notice of appeal may be given within 70 days after such entry. A final order shall include:

- (1) Any order finding absence of jurisdiction;
- (2) Any order which in effect determines the action and prevents a judgment from which appeal might be taken;
- (3) Any order of disposition after an adjudication that a juvenile is delinquent or undisciplined; or
- (4) Any order modifying custodial rights.

" 7B-2603. Right to appeal transfer decision.

(a) Notwithstanding G.S. 7B-2602, any order transferring jurisdiction of the district court in a juvenile matter to the superior court may be appealed to the superior court for a hearing on the record. Notice of the appeal must be given in open court or in writing within 10 days after the transfer hearing in the district court. A juvenile who fails to appeal the transfer order to the superior court waives the right to raise the issue of transfer before the Court of Appeals until final disposition of the matter in superior court. The clerk of superior court shall provide the district attorney with a copy of any written notice of appeal filed by the attorney for the juvenile. Upon expiration of the 10 day period in which an appeal may be entered, if an appeal has been entered and not withdrawn, the clerk shall transfer the case to the superior court docket. The superior court shall, within a reasonable time, review the record of the transfer hearing for abuse of discretion by the juvenile court in the issue of transfer. The superior court shall not review the findings as to probable cause for the underlying offense.

(b) Once an order of transfer has been entered by the district court, the juvenile has the right to be considered for pretrial release as provided in G.S. 15A-533 and G.S. 15A-534. The release order shall specify the person or persons to whom the juvenile may be released. Pending release, the court shall order that the juvenile be detained in a detention facility while awaiting trial. The court may order the juvenile to be held in a holdover facility as defined by G.S. 7B-1501 at any time the presence of the juvenile is required in court for pretrial hearings or trial, if the court finds that it would be inconvenient to return the juvenile to the detention facility.

(c) If an appeal of the transfer order is taken, the superior court shall enter an order either (i) remanding the case to the juvenile court for adjudication or (ii) upholding the transfer order. If the superior court remands the case to juvenile court for adjudication and the juvenile has been granted pretrial release provided in G.S. 15A-533 and G.S. 15A-534, the obligor shall be released from the juvenile's bond upon the district court's review of whether the juvenile shall be placed in secure or nonsecure custody as provided in G.S. 7B-1903.

(d) The superior court order shall be an interlocutory order, and the issue of transfer may be appealed to the Court of Appeals only after the juvenile has been convicted in superior court.

"§ 7B-2604. Proper parties for appeal.

An appeal may be taken by the juvenile, the juvenile's parent, guardian, or custodian, or the State. The State's appeal is limited to the following orders in delinquency or undisciplined cases:

- (1) An order finding a State statute to be unconstitutional; and
- (2) Any order which terminates the prosecution of a petition by upholding the defense of double jeopardy, by holding that a cause of action is not stated under a statute, or by granting a motion to suppress.

"§ 7B-2605. Disposition pending appeal.

Pending disposition of an appeal, the release of the juvenile, with or without conditions, should issue in every case unless the court orders otherwise. For compelling reasons which must be stated in writing, the court may enter a temporary order affecting the custody or placement of the juvenile as the court finds to be in the best interests of the juvenile or the State.

"§ 7B-2606. Disposition after appeal.

Upon the affirmation of the order of adjudication or disposition of the court by the Court of Appeals or by the Supreme Court in the event of an appeal, the court shall have authority to modify or alter the original order of adjudication or disposition as the court finds to be in the best interests of the juvenile to reflect any adjustment made by the juvenile or change in circumstances during the period of time the appeal was pending. If the modifying order is entered ex parte, the court shall give notice to interested parties to show cause within 10 days thereafter as to why the modifying order should be vacated or altered.

"ARTICLE 27.

"Authority Over Parents of Juveniles
Adjudicated Delinquent or Undisciplined.

"§ 7B-2700. Appearance in court.

The parent, guardian, or custodian of a juvenile under the jurisdiction of the juvenile court shall attend the hearings of which the parent, guardian, or custodian receives notice. The court may excuse the appearance of either or both parents or the guardian or custodian at a particular hearing or all hearings. Unless so excused, the willful failure of a parent, guardian, or custodian to attend a hearing of which the parent, guardian, or custodian has notice shall be grounds for contempt.

"§ 7B-2701. Parental responsibility classes.

The court may order the parent, guardian, or custodian of a juvenile who has been adjudicated undisciplined or delinquent to attend parental responsibility classes if those classes are available in the judicial district in which the parent, guardian, or custodian resides.

"§ 7B-2702. Medical, surgical, psychiatric, or psychological evaluation or treatment of juvenile or parent.

(a) If the court orders medical, surgical, psychiatric, psychological, or other evaluation or treatment pursuant to G.S. 7B-2502, the court may order the parent or other responsible parties to pay the cost of the treatment or care ordered.

(b) At the dispositional hearing or a subsequent hearing, if the court finds that it is in the best interests of the juvenile for the parent to be directly involved in the juvenile's evaluation or treatment, the court may order that person to participate in medical, psychiatric, psychological, or other evaluation or treatment of the juvenile. The cost of the evaluation or treatment shall be paid pursuant to G.S. 7B-2502.

(c) At the dispositional hearing or a subsequent hearing, the court may determine whether the best interests of the juvenile require that the parent undergo psychiatric, psychological, or other evaluation or treatment or counseling directed toward remedying behaviors or conditions that led to or contributed to the juvenile's adjudication or to the court's decision to remove custody of the juvenile from the parent. If the court finds that the best interests of the juvenile require the parent undergo evaluation or treatment, it may order that person to comply with a plan of evaluation or treatment approved by the court or condition legal custody or physical placement of the juvenile with the parent upon that person's compliance with the plan of evaluation or treatment.

(d) In cases in which the court has ordered the parent of the juvenile to comply with or undergo evaluation or treatment, the court may order the parent to pay the cost of evaluation or treatment ordered pursuant to this subsection. In cases in which the court has conditioned legal custody or physical placement of the juvenile with the parent upon the parent's compliance with a plan of evaluation or treatment, the court may charge the cost of the evaluation or treatment to the county of the juvenile's residence if the court finds the parent is unable to pay the cost of the evaluation or treatment. In all other cases, if the court finds the parent is unable to pay the cost of the evaluation or treatment ordered pursuant to this subsection, the court may order the parent to receive evaluation or treatment currently available from the area mental health program that serves the parent's catchment area.

"§ 7B-2703. Compliance with orders of court.

(a) The court may order the parent, guardian, or custodian, to the extent that person is able to do so, to provide transportation for a juvenile to keep an appointment with a court counselor or to comply with other orders of the court.

(b) The court may order a parent, guardian, or custodian to cooperate with and assist the juvenile in complying with the terms and conditions of probation or other orders of the court.

"§ 7B-2704. Payment of support or other expenses; assignment of insurance coverage.

At the dispositional hearing or a subsequent hearing, if the court finds that the parent is able to do so, the court may order the parent to:

- (1) Pay a reasonable sum that will cover in whole or in part the support of the juvenile. If the court requires the payment of child support, the amount of the payments shall be determined as provided in G.S. 50-13.4;
- (2) Pay a fee for probation supervision or residential facility costs;
- (3) Assign private insurance coverage to cover medical costs while the juvenile is in secure detention, training school, or other out-of-home placement; and
- (4) Pay court-appointed attorneys' fees.

All money paid by a parent pursuant to this section shall be paid into the office of the clerk of superior court.

If the court places a juvenile in the custody of a county department of social services and if the court finds that the parent is unable to pay the cost of the support required by the juvenile, the cost shall be paid by the county department of social services in whose custody the juvenile is placed, provided the juvenile is not receiving care in an institution owned or operated by the State or federal government or any subdivision thereof.

"§ 7B-2705. Employment discrimination unlawful.

No employer may discharge, demote, or deny a promotion or other benefit of employment to any employee because the employee complies with the provisions of this Article. The Commissioner of Labor shall enforce the provisions of this section according to Article 21 of Chapter 95 of the General Statutes, including the rules and regulations issued pursuant to that Article.

"§ 7B-2706. Contempt for failure to comply.

Upon motion of the court counselor or prosecutor or upon the court's own motion, the court may issue an order directing the parent, guardian, or custodian to appear and show cause why the parent, guardian, or custodian should not be found or held in civil or criminal contempt for willfully failing to comply with an order of the court. Chapter 5A of the General Statutes shall govern contempt proceedings initiated pursuant to this Article.

"ARTICLE 28."Interstate Compact on Juveniles."§ 7B-2800. Execution of Compact.

The Governor is hereby authorized and directed to execute a Compact on behalf of this State with any other state or states legally joining therein in the form substantially as follows: The contracting states solemnly agree.

"§ 7B-2801. Findings and purposes.

Juveniles who are not under proper supervision and control, or who have absconded, escaped, or run away, are likely to endanger their own health, morals, and welfare, and the health, morals, and welfare of others. The cooperation of the states party to this Compact is therefore necessary to provide for the welfare and protection of juveniles and of the public with respect to:

- (1) Cooperative supervision of delinquent juveniles on probation or parole;
- (2) The return, from one state to another, of delinquent juveniles who have escaped or absconded;
- (3) The return, from one state to another, of nondelinquent juveniles who have run away from home; and
- (4) Additional measures for the protection of juveniles and of the public, which any two or more of the party states may find desirable to undertake cooperatively.

In carrying out the provisions of this Compact, the party states shall be guided by the noncriminal, reformatory, and protective policies which guide their laws concerning delinquent, neglected, or dependent juveniles generally. It shall be the policy of the states party to this Compact to cooperate and observe their respective responsibilities for the prompt return and acceptance of juveniles and delinquent juveniles who become subject to the provisions of this Compact. The provisions of this Compact shall be reasonably and liberally construed to accomplish the foregoing purposes.

"§ 7B-2802. Existing rights and remedies.

All remedies and procedures provided by this Compact are in addition to and not in substitution for other rights, remedies, and procedures and are not in derogation of parental rights and responsibilities.

"§ 7B-2803. Definitions.

For the purposes of this Compact, 'delinquent juvenile' means any juvenile who has been adjudged delinquent and who, at the time the provisions of this Compact are invoked, is still subject to the jurisdiction of the court that has made adjudication or to the jurisdiction or supervision of an agency or institution pursuant to an order of the court; 'probation or parole' means any kind of post-release supervision of juveniles authorized under the laws of the states party hereto; 'court' means any court having jurisdiction over delinquent, neglected, or dependent juveniles; 'state' means any state, territory, or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico; and 'residence' or any variant thereof means a place at which a home or regular place of abode is maintained.

"§ 7B-2804. Return of runaways.

(a) The parent, guardian, person, or agency entitled to legal custody of a juvenile who has not been adjudged delinquent but who has run away without the consent of the parent, guardian, person, or agency may petition the appropriate court in the demanding state for the issuance of a requisition for the juvenile's return. The petition shall state the name and age of the juvenile, the name of the petitioner, and the basis of entitlement to the juvenile's custody, the circumstances of the running away, the juvenile's

location if known at the time application is made, and any other facts that may tend to show that the juvenile who has run away is endangering the juvenile's own welfare or the welfare of others and is not an emancipated minor. The petition shall be verified by affidavit, shall be executed in duplicate, and shall be accompanied by two certified copies of the document or documents on which the petitioner's entitlement to the juvenile's custody is based, such as birth certificates, letters of guardianship, or custody decrees. Any further affidavits and other documents as may be deemed proper may be submitted with the petition. The judge of the court to which this application is made may hold a hearing thereon to determine whether for the purposes of this Compact the petitioner is entitled to the legal custody of the juvenile, whether or not it appears that the juvenile has in fact run away without consent, whether or not the juvenile is an emancipated minor, and whether or not it is in the best interests of the juvenile to compel the juvenile's return to the state. If the judge determines, either with or without a hearing, that the juvenile should be returned, the judge shall present to the appropriate court or to the executive authority of the state where the juvenile is alleged to be located a written requisition for the return of the juvenile. The requisition shall set forth the name and age of the juvenile, the determination of the court that the juvenile has run away without the consent of a parent, guardian, person, or agency entitled to legal custody, and that it is in the best interests and for the protection of the juvenile that the juvenile be returned. In the event that a proceeding for the adjudication of the juvenile as a delinquent, neglected, or dependent juvenile is pending in the court at the time when the juvenile runs away, the court may issue a requisition for the return of the juvenile upon its own motion, regardless of the consent of the parent, guardian, person, or agency entitled to legal custody, reciting therein the nature and circumstances of the pending proceeding. The requisition shall in every case be executed in duplicate and shall be signed by the judge. One copy of the requisition shall be filed with the Compact Administrator of the demanding state, there to remain on file subject to the provisions of law governing records of the court. Upon the receipt of a requisition demanding the return of a juvenile who has run away, the court or the executive authority to whom the requisition is addressed shall issue an order to any peace officer or other appropriate person directing that person to take into custody and detain the juvenile. The detention order must substantially recite the facts necessary to the validity of its issuance hereunder. No juvenile detained upon the order shall be delivered over to the officer whom the court has appointed to receive the juvenile unless the juvenile first is taken before a judge of a court in the state, who shall inform the juvenile of the demand made for the juvenile's return, and who may appoint counsel or guardian ad litem for the juvenile. If the court finds that the requisition is in order, the court shall deliver the juvenile over to the officer appointed to receive the juvenile by the court demanding the juvenile. The court, however, may fix a reasonable time to be allowed for the purpose of testing the legality of the proceeding.

Upon reasonable information that a person is a juvenile who has run away from another state party to this Compact without the consent of a parent, guardian, person, or agency entitled to legal custody, the juvenile may be

taken into custody without a requisition and brought before a judge of the appropriate court who may appoint counsel or guardian ad litem for the juvenile and who shall determine after a hearing whether sufficient cause exists to hold the person, subject to the order of the court, for the juvenile's own protection and welfare, for such a time not exceeding 90 days as will enable the return of the juvenile to another state party to this Compact pursuant to a requisition for return from a court of that state. If, at the time when a state seeks the return of a juvenile who has run away, there is pending in the state wherein the juvenile is found, any criminal charge, or any proceeding to have the juvenile adjudicated a delinquent juvenile for an act committed in the state, or if the juvenile is suspected of having committed within the state a criminal offense or an act of juvenile delinquency, the juvenile shall not be returned without the consent of the state until discharged from prosecution or other form of proceeding, imprisonment, detention, or supervision for the offense or juvenile delinquency. The duly accredited officers of any state party to this Compact, upon the establishment of their authority and the identity of the juvenile being returned, shall be permitted to transport the juvenile through any and all states party to this Compact, without interference. Upon return of the juvenile to the state from which the juvenile ran away, the juvenile shall be subject to such further proceedings as may be appropriate under the laws of that state.

(b) The state to which the juvenile is returned under this Article shall be responsible for payment of the transportation costs of return.

(c) The term 'juvenile' as used in this Article means any person who is a minor under the law of the state of residence of the parent, guardian, person, or agency entitled to the legal custody of the minor.

"§ 7B-2805. Return of escapees and absconders.

(a) The appropriate person or authority from whose probation or parole supervision a delinquent juvenile has absconded or from whose institutional custody a delinquent juvenile has escaped shall present to the appropriate court or to the executive authority of the state where the delinquent juvenile is alleged to be located a written requisition for the return of the delinquent juvenile. The requisition shall state the name and age of the delinquent juvenile, the particulars of the juvenile's adjudication as a delinquent juvenile, the circumstances of the breach of the terms of probation or parole or of the juvenile's escape from an institution or agency vested with legal custody or supervision, and the location of the delinquent juvenile, if known, at the time the requisition is made. The requisition shall be verified by affidavit, shall be executed in duplicate, and shall be accompanied by two certified copies of the judgment, formal adjudication, or order of commitment which subjects the delinquent juvenile to probation or parole or to the legal custody of the institution or agency concerned. Any further affidavits and documents as may be deemed proper may be submitted with the requisition. One copy of the requisition shall be filed with the Compact Administrator of the demanding state, there to remain on file subject to the provisions of the law governing records of the appropriate court. Upon the receipt of a requisition demanding the return of a delinquent juvenile who has absconded or escaped, the court or the executive authority to whom the

requisition is addressed shall issue an order to any peace officer or other appropriate person directing the person to take into custody and detain such delinquent juvenile. The detention order must substantially recite the facts necessary to the validity of its issuance hereunder. No delinquent juvenile detained upon the order shall be delivered over to the officer whom the appropriate person or authority demanding the juvenile has appointed to receive the juvenile, unless the juvenile is first taken forthwith before a judge of an appropriate court in the state, who shall inform the juvenile of the demand made for the return, and who may appoint counsel or guardian ad litem for the juvenile. If the judge of the court finds that the requisition is in order, the judge shall deliver the delinquent juvenile over to the officer whom the appropriate person or authority demanding the juvenile appointed to receive the juvenile. The judge, however, may fix a reasonable time to be allowed for the purpose of testing the legality of the proceeding.

Upon reasonable information that a person is a delinquent juvenile who has absconded while on probation or parole, or escaped from an institution or agency vested with legal custody or supervision in any state party to this Compact, the person may be taken into custody in any other state party to this Compact without a requisition. But in that event, the juvenile shall be taken forthwith before a judge of the appropriate court, who may appoint counsel or guardian ad litem for the person and who shall determine after a hearing, whether sufficient cause exists to hold the person subject to the order of the court for a length of time, not exceeding 90 days, as will enable detention of the juvenile under a detention order issued on a requisition pursuant to this Article. If, at the time when a state seeks the return of a delinquent who has either absconded while on probation or parole or escaped from an institution or agency vested with legal custody or supervision, there is pending in the state wherein the juvenile is detained any criminal charge or any proceeding to have the juvenile adjudicated a delinquent juvenile for an act committed in the state, or if the juvenile is suspected of having committed a criminal offense or an act of juvenile delinquency within the state, the juvenile shall not be returned without the consent of the state until discharged from prosecution or other form of proceeding, imprisonment, detention, or supervision for the offense or juvenile delinquency. The duly accredited officers of any state party to this Compact, upon the establishment of their authority and the identity of the delinquent juvenile being returned, shall be permitted to transport the delinquent juvenile through any and all states party to this Compact, without interference. Upon return to the state from which the juvenile escaped or absconded, the delinquent juvenile shall be subject to any further proceedings appropriate under the laws of that state.

(b) The state to which a delinquent juvenile is returned under this Article shall be responsible for the payment of transportation costs of the return.

"§ 7B-2806. Voluntary return procedure.

Any delinquent juvenile who has absconded while on probation or parole, or escaped from an institution or agency vested with legal custody or supervision in any state party to this Compact, and any juvenile who has run away from any state party to this Compact, who is taken into custody without a requisition in another state party to this Compact under the provisions of

G.S. 7B-2804(a) or G.S. 7B-2805(a), may consent to the immediate return of the juvenile to the state from which the juvenile absconded, escaped, or ran away. Consent shall be given by the juvenile or delinquent juvenile and the juvenile's counsel or guardian ad litem, if any, by executing or subscribing a writing in the presence of a judge of the appropriate court, which states that the juvenile or delinquent juvenile and the juvenile's counsel or guardian ad litem, if any, consent to return of the juvenile to the demanding state. Before consent is executed or subscribed, however, the judge, in the presence of counsel or guardian ad litem, if any, shall inform the juvenile or delinquent juvenile of the juvenile's rights under this Compact. When the consent has been duly executed, it shall be forwarded to and filed with the Compact Administrator of the state in which the court is located, and the judge shall direct the officer having the juvenile or delinquent juvenile in custody to deliver the juvenile to the duly accredited officer or officers of the state demanding return of the juvenile and shall cause to be delivered to the officer or officers a copy of the consent. The court may, however, upon the request of the state to which the juvenile or delinquent juvenile is being returned, order the juvenile to return unaccompanied to the state and shall provide the juvenile with a copy of the court order; in that event a copy of the consent shall be forwarded to the Compact Administrator of the state to which the juvenile or delinquent juvenile is ordered to return.

"§ 7B-2807. Cooperative supervision of probationers and parolees.

(a) That the duly constituted judicial and administrative authorities of a state party to this Compact (herein called 'sending state') may permit any delinquent juvenile within such state, placed on probation or parole, to reside in any other state party to this Compact (herein called 'receiving state') while on probation or parole, and the receiving state shall accept the delinquent juvenile, if the parent, guardian, or person entitled to the legal custody of the delinquent juvenile is residing or undertakes to reside within the receiving state. Before granting permission, opportunity shall be given to the receiving state to make investigations as it deems necessary. The authorities of the sending state shall send to the authorities of the receiving state copies of pertinent court orders, social case studies, and all other available information which may be of value to and assist the receiving state in supervising a probationer or parolee under this Compact. A receiving state, in its discretion, may agree to accept supervision of a probationer or parolee in cases where the parent, guardian, or person entitled to the legal custody of the delinquent juvenile is not a resident of the receiving state, and if so accepted, the sending state may transfer the supervision accordingly.

(b) That each receiving state will assume the duties of visitation and of supervision over any delinquent juvenile and in the exercise of those duties will be governed by the same standards of visitation and supervision that prevail for its own delinquent juveniles released on probation or parole.

(c) That, after consultation between the appropriate authorities of the sending state and of the receiving state as to the desirability and necessity of returning the delinquent juvenile, the duly accredited officers of a sending state may enter a receiving state and there apprehend and retake any delinquent juvenile on probation or parole. For that purpose, no formalities

will be required other than establishing the authority of the officer and the identity of the delinquent juvenile to be retaken and returned. The decision of the sending state to retake a delinquent juvenile on probation or parole shall be conclusive upon and not reviewable within the receiving state, but if, at the time the sending state seeks to retake a delinquent juvenile on probation or parole, there is pending against the juvenile within the receiving state any criminal charge or any proceeding to have the juvenile adjudicated a delinquent juvenile for any act committed in the state or if the juvenile is suspected of having committed within the state a criminal offense or an act of juvenile delinquency, the juvenile shall not be returned without the consent of the receiving state until discharged from prosecution or other form of proceeding, imprisonment, detention, or supervision for the offense or juvenile delinquency. The duly accredited officers of the sending state shall be permitted to transport delinquent juveniles being so returned through any and all states party to this Compact without interference.

(d) The sending state shall be responsible under this Article for paying the costs of transporting any delinquent juvenile to the receiving state or of returning any delinquent juvenile to the sending state.

"§ 7B-2808. Responsibility for costs.

(a) The provisions of G.S. 7B-2804(b), 7B-2805(b), and 7B-2807(d) shall not be construed to alter or affect any internal relationship among the departments, agencies, and officers of and in the government of a party state, or between a party state and its subdivisions, as to the payment of costs or responsibilities therefor.

(b) Nothing in this Compact shall be construed to prevent any party state or subdivision thereof from asserting any right against any person, agency, or other entity in regard to costs for which such party state or subdivision thereof may be responsible pursuant to G.S. 7B-2804(b), 7B-2805(b), and 7B-2807(d).

"§ 7B-2809. Detention practices.

To every extent possible, it shall be the policy of states party to this Compact that no juvenile or delinquent juvenile shall be placed or detained in any prison, jail, or lockup, nor be detained or transported in association with criminal, vicious, or dissolute persons.

"§ 7B-2810. Supplementary agreements.

The duly constituted administrative authorities of a state party to this Compact may enter into supplementary agreements with any other state or states party hereto for the cooperative care, treatment, and rehabilitation of delinquent juveniles whenever they find that the agreements will improve the facilities or programs available for care, treatment, and rehabilitation. Care, treatment, and rehabilitation may be provided in an institution located within any state entering into a supplementary agreement. Supplementary agreements shall:

- (1) Provide the rates to be paid for the care, treatment, and custody of delinquent juveniles taking into consideration the character of facilities, services, and subsistence furnished;
- (2) Provide that the delinquent juvenile shall be given a court hearing prior to the juvenile being sent to another state for care, treatment, and custody;

- (3) Provide that the state receiving a delinquent juvenile in one of its institutions shall act solely as agent for the state sending the delinquent juvenile;
- (4) Provide that the sending state shall at all times retain jurisdiction over delinquent juveniles sent to an institution in another state;
- (5) Provide for reasonable inspection of the institutions by the sending state;
- (6) Provide that the consent of the parent, guardian, person, or agency entitled to the legal custody of the delinquent juvenile shall be secured prior to the juvenile being sent to another state; and
- (7) Make provisions for any other matters and details as shall be necessary to protect the rights and equities of delinquent juveniles and of the cooperating states.

"§ 7B-2811. Acceptance of federal and other aid.

Any state party to this Compact may accept any and all donations, gifts, and grants of money, equipment, and services from the federal or any local government, or any agency thereof and from any person, firm, or corporation, for any of the purposes and functions of this Compact, and may receive and utilize, the same subject to the terms, conditions, and regulations governing such donations, gifts, and grants.

"§ 7B-2812. Compact administrators.

The governor of each state party to this Compact shall designate an officer who, acting jointly with like officers of other party states, shall promulgate rules and regulations to carry out more efficiently the terms and provisions of this Compact.

"§ 7B-2813. Execution of Compact.

This Compact shall become operative immediately upon its execution by any state as between it and any other state or states so executing. When executed it shall have the full force and effect of law within the state, the form of execution to be in accordance with the laws of the executing state.

"§ 7B-2814. Renunciation.

This Compact shall continue in force and remain binding upon each executing state until renounced by it. Renunciation of this Compact shall be by the same authority which executed it, by sending six months' notice in writing of its intention to withdraw from the Compact to the other states party hereto. The duties and obligations of a renouncing state under G.S. 7B-2807 hereof shall continue as to parolees and probationers residing therein at the time of withdrawal until retaken or finally discharged. Supplementary agreements entered into under G.S. 7B-2810 hereof shall be subject to renunciation as provided by supplementary agreements and shall not be subject to the six months' renunciation notice of the present section.

"§ 7B-2815. Severability.

The provisions of this Compact shall be severable and, if any phrase, clause, sentence, or provision of this Compact is declared to be contrary to the constitution of any participating state or of the United States or the applicability thereof to any government, agency, person, or circumstances is held invalid, the validity of the remainder of this Compact and the applicability thereof to any government, agency, person, or circumstances

shall not be affected thereby. If this Compact shall be held contrary to the constitution of any state participating therein, the Compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

"§ 7B-2816. Authority of Governor to designate Compact Administrator.

Pursuant to said Compact, the Governor is hereby authorized and empowered to designate an officer who shall be the Compact Administrator and who, acting jointly with like officers of other party states, shall adopt rules and regulations to carry out more effectively the terms of the Compact. The Compact Administrator shall serve subject to the pleasure of the Governor. The Compact Administrator is hereby authorized, empowered, and directed to cooperate with all departments, agencies, and officers of and in the government of this State and its subdivisions in facilitating the proper administration of the Compact or of any supplementary agreement or agreements entered into by this State hereunder.

"§ 7B-2817. Authority of Compact Administrator to enter into supplementary agreements.

The Compact Administrator is hereby authorized and empowered to enter into supplementary agreements with appropriate officials of other states pursuant to the Compact. In the event that the supplementary agreement shall require or contemplate the use of any institution or facility of this State or require or contemplate the provision of any service by this State, the supplementary agreement shall have no force or effect until approved by the head of the department or agency under whose jurisdiction said institution or facility is operated or whose department or agency will be charged with the rendering of the service.

"§ 7B-2818. Discharging financial obligations imposed by Compact or agreement.

The Compact Administrator, subject to the approval of the Director of the Budget, may make or arrange for any payments necessary to discharge any financial obligations imposed upon this State by the Compact or by any supplementary agreement entered into thereunder.

"§ 7B-2819. Enforcement of Compact.

The courts, departments, agencies, and officers of this State and subdivisions shall enforce this Compact and shall do all things appropriate to the effectuation of its purposes and intent which may be within their respective jurisdictions.

"font=2>§ 7B-2820. Additional procedure for returning runaways not precluded.

In addition to any procedure provided in G.S. 7B-2804 and G.S. 7B-2806 of the Compact for the return of any runaway juvenile, the particular states, the juvenile or the juvenile's parents, the courts, or other legal custodian involved may agree upon and adopt any other plan or procedure legally authorized under the laws of this State and the other respective party states for the return of any runaway juvenile.

"§ 7B-2821. Proceedings for return of runaways under G.S. 7B-2804 of Compact; 'juvenile' construed.

The judge of any court in North Carolina to which an application is made for the return of a runaway under the provisions of G.S. 7B-2804 of the

Interstate Compact on Juveniles shall hold a hearing thereon to determine whether for the purposes of the Compact the petitioner is entitled to the legal custody of the juvenile, whether or not it appears that the juvenile has in fact run away without consent, whether or not the juvenile is an emancipated minor, and whether or not it is in the best interests of the juvenile to compel the return of the juvenile to the state. The judge of any court in North Carolina, finding that a requisition for the return of a juvenile under the provisions of G.S. 7B-2804 of the Compact is in order, shall upon request fix a reasonable time to be allowed for the purpose of testing the legality of the proceeding. The period of time for holding a juvenile in custody under the provisions of G.S. 7B-2804 of the Compact for the protection and welfare of the juvenile, subject to the order of a court of this State, to enable the juvenile's return to another state party to the Compact pursuant to a requisition for return from a court of that state, shall not exceed 30 days. In applying the provisions of G.S. 7B-2804 of the Compact to secure the return of a runaway from North Carolina, the courts of this State shall construe the word 'juvenile' as used in this Article to mean any person who has not reached the person's eighteenth birthday.

"§ 7B-2822. Interstate parole and probation hearing procedures for juveniles.

Where supervision of a parolee or probationer is being administered pursuant to the Interstate Compact on Juveniles, the appropriate judicial or administrative authorities in this State shall notify the Compact Administrator of the sending state whenever, in their view, consideration should be given to retaking or reincarceration for a parole or a probation violation. Prior to giving of notification, a hearing shall be held in accordance with this Article within a reasonable time, unless the hearing is waived by the parolee or probationer. The appropriate officer or officers of this State shall, as soon as practicable, following termination of any hearing, report to the sending state, furnish a copy of the hearing record, and make recommendations regarding the disposition to be made of the parolee or probationer by the sending state. Pending any proceeding pursuant to this section, the appropriate officers of this State may take custody of and detain the parolee or probationer involved for a period not to exceed 10 days prior to the hearing and, if it appears to the hearing officer or officers that retaking or reincarceration is likely to follow, for a reasonable period after the hearing or waiver as may be necessary to arrange for retaking or the reincarceration.

"§ 7B-2823. Hearing officers.

Any hearing pursuant to this Article may be before the Administrator of the Interstate Compact on Juveniles, a deputy of the Administrator, or any other person authorized pursuant to the juvenile laws of this State to hear cases of alleged juvenile parole or probation violations, except that no hearing officer shall be the person making the allegation of violation.

"§ 7B-2824. Due process at parole or probation violation hearing.

With respect to any hearing pursuant to this Article, the parolee or probationer:

- (1) Shall have reasonable notice in writing of the nature and content of the allegations to be made, including notice that the purpose of the hearing is to determine whether there is probable cause to

believe that the parolee or probationer has committed a violation that may lead to a revocation of parole or probation;

- (2) Shall be permitted to advise with any persons whose assistance the parolee or probationer reasonably desires, prior to the hearing;
- (3) Shall have the right to confront and examine any persons who have made allegations against the parolee or probationer, unless the hearing officer determines that confrontation would present a substantial present or subsequent danger of harm to the person or persons; and
- (4) May admit, deny, or explain the violation alleged and may present proof, including affidavits and other evidence, in support of the parolee's or probationer's contentions.

A record of the proceedings shall be made and preserved.

"§ 7B-2825. Effect of parole or probation violation hearing outside State.

In any case of alleged parole or probation violation by a person being supervised in another state pursuant to the Interstate Compact on Juveniles, any appropriate judicial or administrative officer or agency in another state is authorized to hold a hearing on the alleged violation. Upon receipt of the record of a parole or probation violation hearing held in another state pursuant to a statute substantially similar to this Article, such record shall have the same standing and effect as though the proceeding of which it is a record was had before the appropriate officer or officers in this State, and any recommendations contained in or accompanying the record shall be fully considered by the appropriate officer or officers of this State in making disposition of the matter.

"§ 7B-2826. Amendment to Interstate Compact on Juveniles concerning interstate rendition of juveniles alleged to be delinquent.

(a) This amendment shall provide additional remedies and shall be binding only as among and between those party states which specifically execute the same.

(b) All provisions and procedures of G.S. 7B-2805 and G.S. 7B-2806 of the Interstate Compact on Juveniles shall be construed to apply to any juvenile charged with being a delinquent by reason of a violation of any criminal law. Any juvenile, charged with being a delinquent by reason of violating any criminal law, shall be returned to the requesting state upon a requisition to the state where the juvenile may be found. A petition in the case shall be filed in a court of competent jurisdiction in the requesting state where the violation of criminal law is alleged to have been committed. The petition may be filed regardless of whether the juvenile has left the state before or after the filing of the petition. The requisition described in G.S. 7B-2805 of the Compact shall be forwarded by the judge of the court in which the petition has been filed.

"§ 7B-2827. Out-of-State Confinement Amendment.

(a) The Out-of-State Confinement Amendment to the Interstate Compact on Juveniles is hereby enacted into law and entered into by this State with all other states legally joining therein in the form substantially as follows:

- (1) Whenever the fully constituted judicial or administrative authorities in a sending state shall determine that confinement of

- a probationer or reconfinement of a parolee is necessary or desirable, the officials may direct that the confinement or reconfinement be in an appropriate institution for delinquent juveniles within the territory of the receiving state, the receiving state to act in that regard solely as agent for the sending state.
- (2) Escapees and absconders who would otherwise be returned pursuant to G.S. 7B-2805 of the Compact may be confined or reconfined in the receiving state pursuant to this amendment. In any case in which the information and allegations are required to be made and furnished in a requisition pursuant to G.S. 7B-2805, the sending state shall request confinement or reconfinement in the receiving state. Whenever applicable, detention orders, as provided in G.S. 7B-2805, may be employed pursuant to this paragraph preliminary to disposition of the escapee or absconder.
- (3) The confinement or reconfinement of a parolee, probationer, escapee, or absconder pursuant to this amendment shall require the concurrence of the appropriate judicial or administrative authorities of the receiving state.
- (4) As used in this amendment: (i) 'sending state' means a sending state as that term is used in G.S. 7B-2807 of the Compact or the state from which a delinquent juvenile has escaped or absconded within the meaning of G.S. 7B-2805 of the Compact; (ii) 'receiving state' means any state, other than the sending state, in which a parolee, probationer, escapee, or absconder may be found, provided that the state is a party to this amendment.
- (5) Every state which adopts this amendment shall designate at least one of its institutions for delinquent juveniles as a 'Compact Institution' and shall confine persons therein as provided in subdivision (1) of this subsection unless the sending and receiving state in question shall make specific contractual arrangements to the contrary. All states party to this amendment shall have access to 'Compact Institutions' at all reasonable hours for the purpose of inspecting the facilities thereof and for the purpose of visiting such of the State's delinquents as may be confined in the institution.
- (6) Persons confined in 'Compact Institutions' pursuant to the terms of this Compact shall at all times be subject to the jurisdiction of the sending state and may at any time be removed from the 'Compact Institution' for transfer to an appropriate institution within the sending state, for return to probation or parole, for discharge, or for any purpose permitted by the laws of the sending state.
- (7) All persons who may be confined in a 'Compact Institution' pursuant to the provisions of this amendment shall be treated in a reasonable and humane manner. The fact of confinement or reconfinement in a receiving state shall not deprive any person so confined or reconfined of any rights which the person would have had if confined or reconfined in an appropriate institution of the

sending state. No agreement to submit to confinement or reconfinement pursuant to the terms of this amendment may be construed as a waiver of any rights which the delinquent would have had if the person had been confined or reconfined in any appropriate institution of the sending state, except that the hearing or hearings, if any, to which a parolee, probationer, escapee, or absconder may be entitled (prior to confinement or reconfinement) by the laws of the sending state may be had before the appropriate judicial or administrative officers of the receiving state. In this event, said judicial and administrative officers shall act as agents of the sending state after consultation with appropriate officers of the sending state.

(8) Any receiving state incurring costs or other expenses under this amendment shall be reimbursed in the amount of the costs or other expenses by the sending state unless the states concerned shall specifically otherwise agree. Any two or more states party to this amendment may enter into supplementary agreements determining a different allocation of costs as among themselves.

(9) This amendment shall take initial effect when entered into by any two or more states party to the Compact and shall be effective as to those states which have specifically enacted this amendment. Rules and regulations necessary to effectuate the terms of this amendment may be adopted by the appropriate officers of those states which have enacted this amendment.

(b) In addition to any institution in which the authorities of this State may otherwise confine or order the confinement of a delinquent juvenile, the authorities may, pursuant to the Out-of-State Confinement Amendment to the Interstate Compact on Juveniles, confine or order the confinement of a delinquent juvenile in a Compact Institution within another party state.

"SUBCHAPTER III. JUVENILE RECORDS.

"ARTICLE 29.

"Records and Social Reports of Cases of Abuse, Neglect, and Dependency.

"§ 7B-2900. Definitions.

The definitions of G.S. 7B-101 and G.S. 7B-1501 apply to this Subchapter.

"§ 7B-2901. Confidentiality of records.

(a) The clerk shall maintain a complete record of all juvenile cases filed in the clerk's office alleging abuse, neglect, or dependency. The records shall be withheld from public inspection and, except as provided in this subsection, may be examined only by order of the court. The record shall include the summons, petition, custody order, court order, written motions, the electronic or mechanical recording of the hearing, and other papers filed in the proceeding. The recording of the hearing shall be reduced to a written transcript only when notice of appeal has been timely given. After the time for appeal has expired with no appeal having been filed, the recording of the hearing may be erased or destroyed upon the written order of the court.

(b) The Director of the Department of Social Services shall maintain a record of the cases of juveniles under protective custody by the Department or under placement by the court, which shall include family background information; reports of social, medical, psychiatric, or psychological information concerning a juvenile or the juvenile's family; interviews with the juvenile's family; or other information which the court finds should be protected from public inspection in the best interests of the juvenile. The records maintained pursuant to this subsection may be examined only by order of the court except that the guardian ad litem, or juvenile, shall have the right to examine them.

(c) In the case of a child victim, the court may order the sharing of information among such public agencies as the court deems necessary to reduce the trauma to the victim.

(d) The court's entire record of a proceeding involving consent for an abortion on an unemancipated minor under Article 1A, Part 2 of Chapter 90 of the General Statutes is not a matter of public record, shall be maintained separately from any juvenile record, shall be withheld from public inspection, and may be examined only by order of the court, by the unemancipated minor, or by the unemancipated minor's attorney or guardian ad litem.

"§ 7B-2902. Disclosure in child fatality or near fatality cases.

(a) The following definitions apply in this section:

- (1) Child fatality. -- The death of a child from suspected abuse, neglect, or maltreatment.
- (2) Findings and information. -- A written summary, as allowed by subsections (c) through (f) of this section, of actions taken or services rendered by a public agency following receipt of information that a child might be in need of protection. The written summary shall include any of the following information the agency is able to provide:
 - a. The dates, outcomes, and results of any actions taken or services rendered.
 - b. The results of any review by the State Child Fatality Prevention Team, a local child fatality prevention team, a local community child protection team, the Child Fatality Task Force, or any public agency.
 - c. Confirmation of the receipt of all reports, accepted or not accepted by the county department of social services, for investigation of suspected child abuse, neglect, or maltreatment, including confirmation that investigations were conducted, the results of the investigations, a description of the conduct of the most recent investigation and the services rendered, and a statement of basis for the department's decision.
- (3) Near fatality. -- A case in which a physician determines that a child is in serious or critical condition as the result of sickness or injury caused by suspected abuse, neglect, or maltreatment.
- (4) Public agency. -- Any agency of State government or its subdivisions as defined in G.S. 132-1(a).

(b) Notwithstanding any other provision of law and subject to the provisions of subsections (c) through (f) of this section, a public agency shall disclose to the public, upon request, the findings and information related to a child fatality or near fatality if:

- (1) A person is criminally charged with having caused the child fatality or near fatality; or
- (2) The district attorney has certified that a person would be charged with having caused the child fatality or near fatality but for that person's prior death.

(c) Nothing herein shall be deemed to authorize access to the confidential records in the custody of a public agency, or the disclosure to the public of the substance or content of any psychiatric, psychological, or therapeutic evaluations or like materials or information pertaining to the child or the child's family unless directly related to the cause of the child fatality or near fatality, or the disclosure of information that would reveal the identities of persons who provided information related to the suspected abuse, neglect, or maltreatment of the child.

(d) Within five working days from the receipt of a request for findings and information related to a child fatality or near fatality, a public agency shall consult with the appropriate district attorney and provide the findings and information unless the agency has a reasonable belief that release of the information:

- (1) Is not authorized by subsections (a) and (b) of this section;
- (2) Is likely to cause mental or physical harm or danger to a minor child residing in the deceased or injured child's household;
- (3) Is likely to jeopardize the State's ability to prosecute the defendant;
- (4) Is likely to jeopardize the defendant's right to a fair trial;
- (5) Is likely to undermine an ongoing or future criminal investigation; or
- (6) Is not authorized by federal law and regulations.

(e) Any person whose request is denied may apply to the appropriate superior court for an order compelling disclosure of the findings and information of the public agency. The application shall set forth, with reasonable particularity, factors supporting the application. The superior court shall have jurisdiction to issue such orders. Actions brought pursuant to this section shall be set down for immediate hearing, and subsequent proceedings in such actions shall be accorded priority by the appellate courts. After the court has reviewed the specific findings and information, in camera, the court shall issue an order compelling disclosure unless the court finds that one or more of the circumstances in subsection (d) of this section exist.

(f) Access to criminal investigative reports and criminal intelligence information of public law enforcement agencies and confidential information in the possession of the State Child Fatality Prevention Team, the local teams, and the Child Fatality Task Force, shall be governed by G.S. 132-1.4 and G.S. 7B-1413 respectively. Nothing herein shall be deemed to require the disclosure or release of any information in the possession of a district attorney.

(g) Any public agency or its employees acting in good faith in disclosing or declining to disclose information pursuant to this section shall be immune from any criminal or civil liability that might otherwise be incurred or imposed for such action.

(h) Nothing herein shall be deemed to narrow or limit the definition of 'public records' as set forth in G.S. 132-1(a).

"ARTICLE 30.

"Juvenile Records and Social Reports of
Delinquency and Undisciplined Cases.

"§ 7B-3000. Juvenile court records.

(a) The clerk shall maintain a complete record of all juvenile cases filed in the clerk's office to be known as the juvenile record. The record shall include the summons and petition, any secure or nonsecure custody order, any electronic or mechanical recording of hearings, and any written motions, orders, or papers filed in the proceeding.

(b) All juvenile records shall be withheld from public inspection and, except as provided in this subsection, may be examined only by order of the court. Except as provided in subsection (c) of this section, the following persons may examine the juvenile's record and obtain copies of written parts of the record without an order of the court:

- (1) The juvenile;
- (2) The juvenile's parent, guardian, or custodian, or the authorized representative of the juvenile's parent, guardian, or custodian;
- (3) The prosecutor; and
- (4) Court counselors.

Except as provided in subsection (c) of this section, the prosecutor may, in the prosecutor's discretion, share information obtained from a juvenile's record with law enforcement officers sworn in this State, but may not allow a law enforcement officer to photocopy any part of the record.

(c) The court may direct the clerk to 'seal' any portion of a juvenile's record. The clerk shall secure any sealed portion of a juvenile's record in an envelope clearly marked 'SEALED: MAY BE EXAMINED ONLY BY ORDER OF THE COURT', or with similar notice, and shall permit examination or copying of sealed portions of a juvenile's record only pursuant to a court order specifically authorizing inspection or copying.

(d) Any portion of a juvenile's record consisting of an electronic or mechanical recording of a hearing shall be transcribed only when notice of appeal has been timely given and shall be copied electronically or mechanically, only by order of the court. After the time for appeal has expired with no appeal having been filed, the court may enter a written order directing the clerk to destroy the recording of the hearing.

(e) The juvenile's record of an adjudication of delinquency for an offense that would be a felony if committed by an adult may be used by law enforcement, the magistrate, and the prosecutor for pretrial release and plea negotiating decisions.

(f) The juvenile's record of an adjudication of delinquency for an offense that would be a Class A, B1, B2, C, D, or E felony if committed by an adult may be used in a subsequent criminal proceeding against the juvenile either under G.S. 8C-1, Rule 404(b), or to prove an aggravating factor at

sentencing under G.S. 15A-1340.4(a), 15A-1340.16(d), or 15A-2000(e). The record may be so used only by order of the court in the subsequent criminal proceeding, upon motion of the prosecutor, after an in camera hearing to determine whether the record in question is admissible.

(g) Except as provided in subsection (d) of this section, a juvenile's record shall be destroyed only as authorized by G.S. 7B-3200 or by rules adopted by the Office of Juvenile Justice.

"§ 7B-3001. Other records relating to juveniles.

(a) The chief court counselor shall maintain a record of all cases of juveniles under supervision of court counselors, to be known as the court counselor's record. The court counselor's record shall include family background information; reports of social, medical, psychiatric, or psychological information concerning a juvenile or the juvenile's family; probation reports; interviews with the juvenile's family; or other information the court finds should be protected from public inspection in the best interests of the juvenile.

(b) Unless jurisdiction of the juvenile has been transferred to superior court, all law enforcement records and files concerning a juvenile shall be kept separate from the records and files of adults and shall be withheld from public inspection. The following persons may examine and obtain copies of law enforcement records and files concerning a juvenile without an order of the court:

- (1) The juvenile;
- (2) The juvenile's parent, guardian, custodian, or the authorized representative of the juvenile's parent, guardian, or custodian;
- (3) The district attorney or prosecutor;
- (4) Court counselors; and
- (5) Law enforcement officers sworn in this State.

Otherwise, the records and files may be examined or copied only by order of the court.

(c) All records and files maintained by the Office pursuant to this Chapter shall be withheld from public inspection. The following persons may examine and obtain copies of the Office records and files concerning a juvenile without an order of the court:

- (1) The juvenile and the juvenile's attorney;
- (2) The juvenile's parent, guardian, custodian, or the authorized representative of the juvenile's parent, guardian, or custodian;
- (3) Professionals in the agency who are directly involved in the juvenile's case; and
- (4) Court counselors.

Otherwise, the records and files may be examined or copied only by order of the court. The court may inspect and order the release of records maintained by the Office.

"ARTICLE 31.

"Disclosure of Juvenile Information.

"§ 7B-3100. Disclosure of information about juveniles.

(a) The Office, after consultation with the Conference of Chief District Court Judges, shall adopt rules designating certain local agencies that are authorized to share information concerning juveniles in accordance with the

provisions of this section. Agencies so designated shall share with one another, upon request, information that is in their possession that is relevant to any case in which a petition is filed alleging that a juvenile is abused, neglected, dependent, undisciplined, or delinquent and shall continue to do so until the juvenile is no longer subject to the jurisdiction of juvenile court. Agencies that may be designated as 'agencies authorized to share information' include local mental health facilities, local health departments, local departments of social services, local law enforcement agencies, local school administrative units, the district's district attorney's office, the Office of Juvenile Justice, and the Office of Guardian ad Litem Services of the Administrative Office of the Courts. Any information shared among agencies pursuant to this section shall remain confidential, shall be withheld from public inspection, and shall be used only for the protection of the juvenile and others or to improve the educational opportunities of the juvenile, and shall be released in accordance with the provisions of the Family Educational and Privacy Rights Act as set forth in 20 U.S.C. § 1232g. Nothing in this section or any other provision of law shall preclude any other necessary sharing of information among agencies. Nothing herein shall be deemed to require the disclosure or release of any information in the possession of a district attorney.

(b) Disclosure of information concerning any juvenile under investigation or alleged to be within the jurisdiction of the court that would reveal the identity of that juvenile is prohibited except that publication of pictures of runaways is permitted with the permission of the parents.

".font=2>§ 7B-3101. Notification of schools when juveniles are alleged or found to be delinquent.

(a) Notwithstanding G.S. 7B-3000, the juvenile court counselor shall deliver verbal and written notification of the following actions to the principal of the school that the juvenile attends:

- (1) A petition is filed under G.S. 7B-1802 that alleges delinquency for an offense that would be a felony if committed by an adult;
- (2) The court transfers jurisdiction over a juvenile to superior court under G.S. 7B-2200;
- (3) The court dismisses under G.S. 7B-2411 the petition that alleges delinquency for an offense that would be a felony if committed by an adult;
- (4) The court issues a dispositional order under Article 25 of Chapter 7B of the General Statutes including, but not limited to, an order of probation that requires school attendance, concerning a juvenile alleged or found delinquent for an offense that would be a felony if committed by an adult; or
- (5) The court modifies or vacates any order or disposition under G.S. 7B-2600 concerning a juvenile alleged or found delinquent for an offense that would be a felony if committed by an adult.

Notification of the school principal in person or by telephone shall be made before the beginning of the next school day. Delivery shall be made as soon as practicable but at least within five days of the action. Delivery shall be made in person or by certified mail. Notification that a petition has been filed shall describe the nature of the offense. Notification of a dispositional

order, a modified or vacated order, or a transfer to superior court shall describe the court's action and any applicable disposition requirements. As used in this subsection, the term 'offense' shall not include any offense under Chapter 20 of the General Statutes.

(b) If the principal of the school the juvenile attends returns any notification as required by G.S. 115C-404, and if the juvenile court counselor learns that the juvenile is transferring to another school, the juvenile court counselor shall deliver the notification to the principal of the school to which the juvenile is transferring. Delivery shall be made as soon as practicable and shall be made in person or by certified mail.

(c) Principals shall handle any notification delivered under this section in accordance with G.S. 115C-404.

(d) For the purpose of this section, 'school' means any public or private school in the State that is authorized under Chapter 115C of the General Statutes.

"ARTICLE 32.

"Expunction of Juvenile Records.

"§ 7B-3200. Expunction of records of juveniles alleged or adjudicated delinquent and undisciplined.

(a) Any person who has attained the age of 18 years may file a petition in the court where the person was adjudicated undisciplined for expunction of all records of that adjudication.

(b) Any person who has attained the age of 18 years may file a petition in the court where the person was adjudicated delinquent for expunction of all records of that adjudication provided:

- (1) The offense for which the person was adjudicated would have been a crime other than a Class A, B1, B2, C, D, or E felony if committed by an adult.
- (2) At least 18 months have elapsed since the person was released from juvenile court jurisdiction, and the person has not subsequently been adjudicated delinquent or convicted as an adult of any felony or misdemeanor other than a traffic violation under the laws of the United States or the laws of this State or any other state.

Records relating to an adjudication for an offense that would be a Class A, B1, B2, C, D, or E felony if committed by an adult shall not be expunged.

(c) The petition shall contain, but not be limited to, the following:

- (1) An affidavit by the petitioner that the petitioner has been of good behavior since the adjudication and, in the case of a petition based on a delinquency adjudication, that the petitioner has not subsequently been adjudicated delinquent or convicted as an adult of any felony or misdemeanor other than a traffic violation under the laws of the United States, or the laws of this State or any other state;
- (2) Verified affidavits of two persons, who are not related to the petitioner or to each other by blood or marriage, that they know the character and reputation of the petitioner in the community in

which the petitioner lives and that the petitioner's character and reputation are good; and

- (3) A statement that the petition is a motion in the cause in the case wherein the petitioner was adjudicated delinquent or undisciplined.

The petition shall be served upon the district attorney in the district wherein adjudication occurred. The district attorney shall have 10 days thereafter in which to file any objection thereto and shall be duly notified as to the date of the hearing on the petition.

(d) If the court, after hearing, finds that the petitioner satisfies the conditions set out in subsections (a) or (b) of this section, the court shall order and direct the clerk and all law enforcement agencies to expunge their records of the adjudication including all references to arrests, complaints, referrals, petitions, and orders.

(e) The clerk shall forward a certified copy of the order to the sheriff, chief of police, or other law enforcement agency.

(f) Records of a juvenile adjudicated delinquent or undisciplined being maintained by the chief court counselor, an intake counselor, or a court counselor shall be retained or disposed of as provided by the Office, except that no records shall be destroyed before the juvenile reaches the age of 18 or 18 months have elapsed since the person was released from juvenile court jurisdiction, whichever occurs last.

(g) Records of a juvenile adjudicated delinquent or undisciplined being maintained by personnel at a residential facility operated by the Office, shall be retained or disposed of as provided by the Office, except that no records shall be destroyed before the juvenile reaches the age of 18 or 18 months have elapsed since the person was released from juvenile court jurisdiction, whichever occurs last.

(h) Any person who was alleged to be delinquent as a juvenile and has attained the age of 16 years, or was alleged to be undisciplined as a juvenile and has attained the age of 18 years, may file a petition in the court in which the person was alleged to be delinquent or undisciplined, for expunction of all juvenile records of the juvenile having been alleged to be delinquent or undisciplined if the court dismissed the juvenile petition without an adjudication that the juvenile was delinquent or undisciplined. The petition shall be served on the chief court counselor in the district where the juvenile petition was filed. The chief court counselor shall have 10 days thereafter in which to file a written objection in the court. If no objection is filed, the court may grant the petition without a hearing. If an objection is filed or the court so directs, a hearing shall be scheduled and the chief court counselor shall be notified as to the date of the hearing. If the court finds at the hearing that the petitioner satisfies the conditions specified herein, the court shall order the clerk and the appropriate law enforcement agencies to expunge their records of the allegations of delinquent or undisciplined acts including all references to arrests, complaints, referrals, juvenile petitions, and orders. The clerk shall forward a certified copy of the order of expunction to the sheriff, chief of police, or other appropriate law enforcement agency, and to the chief court counselor,

and these specified officials shall immediately destroy all records relating to the allegations that the juvenile was delinquent or undisciplined.

(i) The clerk of superior court in each county in North Carolina shall, as soon as practicable after each term of court in the clerk's county, file with the Administrative Office of the Courts, the names of those persons granted an expunction under the provisions of this section, and the Administrative Office of the Courts shall maintain a confidential file containing the names of persons granted an expunction. The information contained in such file shall be disclosed only to judges of the General Court of Justice of North Carolina for the purpose of ascertaining whether any person charged with an offense has been previously granted an expunction.

"§ 7B-3201. Effect of expunction.

(a) Whenever a juvenile's record is expunged, with respect to the matter in which the record was expunged, the juvenile who is the subject of the record and the juvenile's parent may not be held thereafter under any provision of any laws to be guilty of perjury or otherwise giving a false statement by reason of the person's failure to recite or acknowledge such record or response to any inquiry made of the person for any purpose.

(b) Notwithstanding subsection (a) of this section, in any delinquency case if the juvenile is the defendant and chooses to testify or if the juvenile is not the defendant and is called as a witness, the juvenile may be ordered to testify with respect to whether the juvenile was adjudicated delinquent.

"§ 7B-3202. Notice of expunction.

Upon expunction of a juvenile's record, the clerk shall send a written notice to the juvenile at the juvenile's last known address informing the juvenile that the record has been expunged and with respect to the matter involved, the juvenile may not be held thereafter under any provision of any laws to be guilty of perjury or otherwise giving a false statement by reason of the juvenile's failure to recite or acknowledge such record or response to any inquiry made of the juvenile for any purpose except that upon testifying in a delinquency proceeding, the juvenile may be required by a court to disclose that the juvenile was adjudicated delinquent.

"ARTICLE 33.

"Computation of Recidivism Rates.

"§ 7B-3300. Juvenile recidivism rates.

(a) On an annual basis, the Office of Juvenile Justice shall compute the recidivism rate of juveniles who are adjudicated delinquent for offenses that would be Class A, B1, B2, C, D, or E felonies if committed by adults and who subsequently are adjudicated delinquent or convicted and shall report the statistics to the Joint Legislative Commission on Governmental Operations by February 15 each year.

(b) The chief court counselor of each judicial district shall forward to the Office relevant information, as determined by the Office, regarding every juvenile who is adjudicated delinquent for an offense that would be a Class A, B1, B2, C, D, or E felony if committed by an adult for the purpose of computing the statistics required by this section.

"SUBCHAPTER IV. PARENTAL AUTHORITY; EMANCIPATION.

"ARTICLE 34.

"Parental Authority Over Juveniles.

"§ 7B-3400. Juvenile under 18 subject to parents' control.

Notwithstanding any other provision of law, any juvenile under 18 years of age, except as provided in G.S. 7B-3402 and G.S. 7B-3403, shall be subject to the supervision and control of the juvenile's parents.

"§ 7B-3401. Definitions.

The definitions of G.S. 7B-101 and G.S. 7B-1501 apply to this Subchapter.

"§ 7B-3402. Exceptions.

This Article shall not apply to any juvenile under the age of 18 who is married or who is serving in the armed forces of the United States, or who has been emancipated.

"§ 7B-3403. No criminal liability created.

This Article shall not be interpreted to place any criminal liability on a parent, guardian, or custodian for any act of the juvenile 16 years of age or older.

"§ 7B-3404. Enforcement.

The provisions of this Article may be enforced by the parent, guardian, custodian, or person who has assumed the status and obligation of a parent without being awarded legal custody of the juvenile by a court to the juvenile by filing a civil action in the district court of the county where the juvenile can be found or the county of the plaintiff's residence. Upon the institution of such action by a verified complaint, alleging that the defendant juvenile has left home or has left the place where the juvenile has been residing and refuses to return and comply with the direction and control of the plaintiff, the court may issue an order directing the juvenile personally to appear before the court at a specified time to be heard in answer to the allegations of the plaintiff and to comply with further orders of the court. Such orders shall be served by the sheriff upon the juvenile and upon any other person named as a party defendant in such action. At the time of the issuance of the order directing the juvenile to appear, the court may in the same order, or by separate order, order the sheriff to enter any house, building, structure, or conveyance for the purpose of searching for the juvenile and serving the order and for the purpose of taking custody of the person of the juvenile in order to bring the juvenile before the court. Any order issued at said hearing shall be treated as a mandatory injunction and shall remain in full force and effect until the juvenile reaches the age of 18, or until further orders of the court. Within 30 days after the hearing on the original order, the juvenile, or anyone acting in the juvenile's behalf, may file a verified answer to the complaint. Upon the filing of an answer by or on behalf of the juvenile, any district court judge holding court in the county or district court district as defined in G.S. 7A-133 where the action was instituted shall have jurisdiction to hear the matter, without a jury, and to make findings of fact, conclusions of law, and render judgment thereon. Appeals from the district court to the Court of Appeals shall be allowed as in civil actions generally. The district court issuing the original order or the district court hearing the matter after answer has been filed shall also have authority to order that any person named defendant in the order or judgment shall not harbor, keep, or allow the defendant juvenile to remain on the person's premises or in the

person's home. Failure of any defendant to comply with the terms of said order or judgment shall be punishable as for contempt.

"ARTICLE 35.

"Emancipation.

"§ 7B-3500. Who may petition.

Any juvenile who is 16 years of age or older and who has resided in the same county in North Carolina or on federal territory within the boundaries of North Carolina for six months next preceding the filing of the petition may petition the court in that county for a judicial decree of emancipation.

"§ 7B-3501. Petition.

The petition shall be signed and verified by the petitioner and shall contain the following information:

- (1) The full name of the petitioner and the petitioner's birth date, and state and county of birth;
- (2) A certified copy of the petitioner's birth certificate;
- (3) The name and last known address of the parent, guardian, or custodian;
- (4) The petitioner's address and length of residence at that address;
- (5) The petitioner's reasons for requesting emancipation; and
- (6) The petitioner's plan for meeting the petitioner's needs and living expenses which plan may include a statement of employment and wages earned that is verified by the petitioner's employer.

"§ 7B-3502. Summons.

A copy of the filed petition along with a summons shall be served upon the petitioner's parent, guardian, or custodian who shall be named as respondents. The summons shall include the time and place of the hearing and shall notify the respondents to file written answer within 30 days after service of the summons and petition. In the event that personal service cannot be obtained, service shall be in accordance with G.S. 1A-1, Rule 4(j).

"§ 7B-3503. Hearing.

The court, sitting without a jury, shall permit all parties to present evidence and to cross-examine witnesses. The petitioner has the burden of showing by a preponderance of the evidence that emancipation is in the petitioner's best interests. Upon finding that reasonable cause exists, the court may order the juvenile to be examined by a psychiatrist, a licensed clinical psychologist, a physician, or any other expert to evaluate the juvenile's mental or physical condition. The court may continue the hearing and order investigation by a court counselor or by the county department of social services to substantiate allegations of the petitioner or respondents.

No husband-wife or physician-patient privilege shall be grounds for excluding any evidence in the hearing.

"§ 7B-3504. Considerations for emancipation.

In determining the best interests of the petitioner and the need for emancipation, the court shall review the following considerations:

- (1) The parental need for the earnings of the petitioner;
- (2) The petitioner's ability to function as an adult;
- (3) The petitioner's need to contract as an adult or to marry;

- (4) The employment status of the petitioner and the stability of the petitioner's living arrangements;
- (5) The extent of family discord which may threaten reconciliation of the petitioner with the petitioner's family;
- (6) The petitioner's rejection of parental supervision or support; and
- (7) The quality of parental supervision or support.

"§ 7B-3505. Final decree of emancipation.

After reviewing the considerations for emancipation, the court may enter a decree of emancipation if the court determines:

- (1) That all parties are properly before the court or were duly served and failed to appear and that time for filing an answer has expired;
- (2) That the petitioner has shown a proper and lawful plan for adequately providing for the petitioner's needs and living expenses;
- (3) That the petitioner is knowingly seeking emancipation and fully understands the ramifications of the act; and
- (4) That emancipation is in the best interests of the petitioner.

The decree shall set out the court's findings.

If the court determines that the criteria in subdivisions (1) through (4) are not met, the court shall order the proceeding dismissed.

"§ 7B-3506. Costs of court.

The court may tax the costs of the proceeding to any party or may, for good cause, order the costs remitted.

The clerk may collect costs for furnishing to the petitioner a certificate of emancipation which shall recite the name of the petitioner and the fact of the petitioner's emancipation by court decree and shall have the seal of the clerk affixed thereon.

"§ 7B-3507. Legal effect of final decree.

As of entry of the final decree of emancipation:

- (1) The petitioner has the same right to make contracts and conveyances, to sue and to be sued, and to transact business as if the petitioner were an adult.
- (2) The parent, guardian, or custodian is relieved of all legal duties and obligations owed to the petitioner and is divested of all rights with respect to the petitioner.
- (3) The decree is irrevocable.

Notwithstanding any other provision of this section, a decree of emancipation shall not alter the application of G.S. 14-326.1 or the petitioner's right to inherit property by intestate succession.

"§ 7B-3508. Appeals.

Any petitioner, parent, guardian, or custodian who is a party to a proceeding under this Article may appeal from any order of disposition to the Court of Appeals provided that notice of appeal is given in open court at the time of the hearing or in writing within 10 days after the hearing. Pending disposition of an appeal, the court may enter a temporary order affecting the custody or placement of the petitioner as the court finds to be in the best interests of the petitioner or the State.

"§ 7B-3509. Application of common law.

A married juvenile is emancipated by this Article. All other common-law provisions for emancipation are superseded by this Article.

"ARTICLE 36.

"Judicial Consent for Emergency Surgical or Medical Treatment.

"§ 7B-3600. Judicial authorization of emergency treatment; procedure.

A juvenile in need of emergency treatment under Article 1A of Chapter 90 of the General Statutes, whose physician is barred from rendering necessary treatment by reason of parental refusal to consent to treatment, may receive treatment with court authorization under the following procedure:

- (1) The physician shall sign a written statement setting out:
 - a. The treatment to be rendered and the emergency need for treatment;
 - b. The refusal of the parent, guardian, custodian, or person who has assumed the status and obligation of a parent without being awarded legal custody of the juvenile by a court to consent to the treatment; and
 - c. The impossibility of contacting a second physician for a concurring opinion on the need for treatment in time to prevent immediate harm to the juvenile.
- (2) Upon examining the physician's written statement prescribed in subdivision (1) of this section and finding:
 - a. That the statement is in accordance with this Article, and
 - b. That the proposed treatment is necessary to prevent immediate harm to the juvenile.

The court may issue a written authorization for the proposed treatment to be rendered.
- (3) In acute emergencies in which time may not permit implementation of the written procedure set out in subdivisions (1) and (2) of this section, the court may authorize treatment in person or by telephone upon receiving the oral statement of a physician satisfying the requirements of subdivision (1) of this section and upon finding that the proposed treatment is necessary to prevent immediate harm to the juvenile.
- (4) The court's authorization for treatment overriding parental refusal to consent should not be given without attempting to offer the parent an opportunity to state the reasons for refusal; however, failure of the court to hear the parent's objections shall not invalidate judicial authorization under this Article.
- (5) The court's authorization for treatment under subdivisions (1) and (2) of this section shall be issued in duplicate. One copy shall be given to the treating physician and the other copy shall be attached to the physician's written statement and filed as a juvenile proceeding in the office of the clerk of court.
- (6) The court's authorization for treatment under subdivision (3) of this section shall be reduced to writing as soon as possible, supported by the physician's written statement as prescribed in subdivision (1) of this section and shall be filed as prescribed in subdivision (5) of this section.

The court's authorization for treatment under this Article shall have the same effect as parental consent for treatment.

Following the court's authorization for treatment and after giving notice to the juvenile's parent, guardian, or custodian the court shall conduct a hearing in order to provide for payment for the treatment rendered. The court may order the parent or other responsible parties to pay the cost of treatment. If the court finds the parent is unable to pay the cost of treatment, the cost shall be a charge upon the county when so ordered.

This Article shall operate as a remedy in addition to the provisions in G.S. 7B-903, 7B-2503, and 7B-2506.

"SUBCHAPTER V. PLACEMENT OF JUVENILES.

"ARTICLE 37.

"Placing or Adoption of Juvenile Delinquents or Dependents.

"§ 7B-3700. Consent required for bringing child into State for placement or adoption.

(a) No person, agency, association, institution, or corporation shall bring or send into the State any child for the purpose of giving custody of the child to some person in the State or procuring adoption by some person in the State without first obtaining the written consent of the Department of Health and Human Services.

(b) The person with whom a child is placed for either of the purposes set out in subsection (a) of this section shall be responsible for the child's proper care and training. The Department of Health and Human Services or its agents shall have the same right of visitation and supervision of the child and the home in which it is placed as in the case of a child placed by the Department or its agents as long as the child shall remain within the State and until the child shall have reached the age of 18 years or shall have been legally adopted.

"§ 7B-3701. Bond required.

The Social Services Commission may, in its discretion, require of a person, agency, association, institution, or corporation which brings or sends a child into the State with the written consent of the Department of Health and Human Services, as provided by G.S. 7B-3700, a continuing bond in a penal sum not in excess of one thousand dollars (\$1,000) with such conditions as may be prescribed and such sureties as may be approved by the Department of Health and Human Services. Said bond shall be made in favor of and filed with the Department of Health and Human Services with the premium prepaid by the said person, agency, association, institution, or corporation desiring to place such child in the State.

"§ 7B-3702. Consent required for removing child from State.

No child shall be taken or sent out of the State for the purpose of placing the child in a foster home or in a child-caring institution without first obtaining the written consent of the Department of Health and Human Services. The foster home or child-caring institution in which the child is placed shall report to the Department of Health and Human Services at such times as the Department of Health and Human Services may direct as to the location and well-being of such child until the child shall have reached the age of 18 years or shall have been legally adopted.

"§ 7B-3703. Violation of Article a misdemeanor.

Every person acting for himself or for an agency who violates any of the provisions of this Article or who shall intentionally make any false statements to the Social Services Commission or the Secretary or an employee thereof acting for the Department of Health and Human Services in an official capacity in the placing or adoption of juvenile delinquents or dependents shall, upon conviction thereof, be guilty of a Class 2 misdemeanor.

"§ 7B-3704. Definitions.

The term 'Department' wherever used in this Article shall be construed to mean the Department of Health and Human Services. The term 'Secretary' wherever used in this Article shall be construed to mean the Secretary of the Department of Health and Human Services.

"§ 7B-3705. Application of Article.

None of the provisions of this Article shall apply when a child is brought into or sent into, or taken out of, or sent out of the State, by the guardian of the person of such child, or by a parent, stepparent, grandparent, uncle or aunt of such child, or by a brother, sister, half brother, or half sister of such child, if such brother, sister, half brother, or half sister is 18 years of age or older.

"ARTICLE 38.

"Interstate Compact on the Placement of Children.

"§ 7B-3800. Adoption of Compact.

The Interstate Compact on the Placement of Children is hereby enacted into law and entered into with all other jurisdictions legally joining therein in a form substantially as contained in this Article. It is the intent of the General Assembly that Article 4 of this Chapter shall govern interstate placements of children between North Carolina and any other jurisdictions not a party to this Compact. It is the intent of the General Assembly that Chapter 48 of the General Statutes shall govern the adoption of children within the boundaries of North Carolina.

Article I. Purpose and Policy.

It is the purpose and policy of the party states to cooperate with each other in the interstate placement of children to the end that:

(a) Each child requiring placement shall receive the maximum opportunity to be placed in a suitable environment and with persons or institutions having appropriate qualifications and facilities to provide a necessary and desirable degree and type of care.

(b) The appropriate authorities in a state where a child is to be placed may have full opportunity to ascertain the circumstances of the proposed placement, thereby promoting full compliance with applicable requirements for the protection of the child.

(c) The proper authorities of the state from which the placement is made may obtain the most complete information on the basis of which to evaluate a projected placement before it is made.

(d) Appropriate jurisdictional arrangements for the care of children will be promoted.

Article II. Definitions.

As used in this Compact:

(a) 'Child' means a person who, by reason of minority, is legally subject to parental, guardianship or similar control.

(b) 'Sending agency' means a party state officer or employee thereof; a subdivision of a party state, or officer or employee thereof; a court of a party state; a person, corporation, association, charitable agency or other entity which sends, brings, or causes to be sent or brought any child to another party state.

(c) 'Receiving state' means the state to which a child is sent, brought, or caused to be sent or brought, whether by public authorities or private persons or agencies, and whether for placement with state or local public authorities of [or] for placement with private agencies or persons.

(d) 'Placement' means the arrangement for the care of a child in a family free or boarding home or in a child-caring agency or institution but does not include any institution caring for the mentally ill, mentally defective, or epileptic or any institution primarily educational in character, and any hospital or other medical facility.

(e) 'Appropriate public authorities' as used in Article III shall, with reference to this State, mean the Department of Health and Human Services and said agency shall receive and act with reference to notices required by Article III.

(f) 'Appropriate authority in the receiving state' as used in paragraph (a) of Article V shall, with reference to this State, means the Secretary.

(g) 'Executive head' as used in Article VII means the Governor.

Article III. Conditions for Placement.

(a) No sending agency shall send, bring, or cause to be sent or brought into any other party state any child for placement in foster care or as a preliminary to a possible adoption unless the sending agency shall comply with each and every requirement set forth in this Article and with the applicable laws of the receiving state governing the placement of children therein.

(b) Prior to sending, bringing, or causing any child to be sent or brought into a receiving state for placement in foster care or as a preliminary to a possible adoption, the sending agency shall furnish the appropriate public authorities in the receiving state written notice of the intention to send, bring, or place the child in the receiving state. The notice shall contain:

(1) The name, date, and place of birth of the child.

(2) The identity and address or addresses of the parents or legal guardian.

(3) The name and address of the person, agency or institution to or with which the sending agency proposes to send, bring, or place the child.

(4) A full statement of the reasons for such proposed action and evidence of the authority pursuant to which the placement is proposed to be made.

(c) Any public officer or agency in a receiving state which is in receipt of a notice pursuant to paragraph (b) of this Article may request of the sending agency, or any other appropriate officer or agency of or in the sending agency's state, and shall be entitled to receive therefrom, such supporting or

additional information as it may deem necessary under the circumstances to carry out the purpose and policy of this Compact.

(d) The child shall not be sent, brought, or caused to be sent or brought into the receiving state until the appropriate public authorities in the receiving state shall notify the sending agency, in writing, to the effect that the proposed placement does not appear to be contrary to the interests of the child.

Article IV. Penalty for Illegal Placement.

The sending, bringing, or causing to be sent or brought into any receiving state of a child in violation of the terms of this Compact shall constitute a violation of the laws respecting the placement of children of both the state in which the sending agency is located or from which it sends or brings the child and of the receiving state. Such violation may be punished or subjected to penalty in either jurisdiction in accordance with its laws. In addition to liability for any such punishment or penalty, any such violation shall constitute full and sufficient grounds for the suspension or revocation of any license, permit, or other legal authorization held by the sending agency which empowers or allows it to place, or care for children.

Article V. Retention of Jurisdiction.

(a) The sending agency shall retain jurisdiction over the child sufficient to determine all matters in relation to the custody, supervision, care, treatment, and disposition of the child which it would have had if the child had remained in the sending agency's state, until the child is adopted, reaches majority, becomes self-supporting or is discharged with the concurrence of the appropriate authority in the receiving state. Such jurisdiction shall also include the power to effect or cause the return of the child or its transfer to another location and custody pursuant to law. The sending agency shall continue to have financial responsibility for support and maintenance of the child during the period of the placement. Nothing contained herein shall defeat a claim of jurisdiction by a receiving state sufficient to deal with an act of delinquency or crime committed therein.

(b) When the sending agency is a public agency, it may enter into an agreement with an authorized public or private agency in the receiving state providing for the performance of one or more services in respect of such case by the latter as agent for the sending agency.

(c) Nothing in this Compact shall be construed to prevent a private charitable agency authorized to place children in the receiving state from performing services or acting as agent in that state for a private charitable agency of the sending state; nor to prevent the agency in the receiving state from discharging financial responsibility for the support and maintenance of a child who has been placed on behalf of the sending agency without relieving the responsibility set forth in paragraph (a) hereof.

Article VI. Institutional Care of Delinquent Children.

A child adjudicated delinquent may be placed in an institution in another party jurisdiction pursuant to this Compact, but no such placement shall be made unless the child is given a court hearing on notice to the parent or guardian with opportunity to be heard, prior to the child's being sent to such other party jurisdiction for institutional care and the court finds that:

- (1) Equivalent facilities for the child are not available in the sending agency's jurisdiction; and
- (2) Institutional care in the other jurisdiction is in the best interests of the child and will not produce undue hardship.

Article VII. Compact Administrator.

The executive head of each jurisdiction party to this Compact shall designate an officer who shall be general coordinator of activities under this Compact in the officer's jurisdiction and who, acting jointly with like officers of other party jurisdictions, shall have power to promulgate rules and regulations to carry out more effectively the terms and provisions of this Compact.

Article VIII. Limitations.

This Compact shall not apply to: (a) the sending or bringing of a child into a receiving state by the child's parent, stepparent, grandparent, adult brother or sister, adult uncle or aunt, or the child's guardian and leaving the child with any such relative or nonagency guardian in the receiving state. (b) Any placement, sending or bringing of a child into a receiving state pursuant to any other interstate compact to which both the state from which the child is sent or brought and the receiving state are party, or to any other agreement between said states which has the force of law.

Article IX. Enactment and Withdrawal.

This Compact shall be open to joinder by any state, territory or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and, with the consent of Congress, the government of Canada or any province thereof. It shall become effective with respect to any such jurisdiction when such jurisdiction has enacted the same into law. Withdrawal from this Compact shall be by the enactment of a statute repealing the same, but shall not take effect until two years after the effective date of such statute and until written notice of the withdrawal has been given by the withdrawing state to the governor of each other party jurisdiction. Withdrawal of a party state shall not affect the rights, duties, and obligations under this Compact of any sending agency therein with respect to a placement made prior to the effective date of withdrawal.

Article X. Construction and Severability.

The provisions of this Compact shall be liberally construed to effectuate the purposes thereof. The provisions of this Compact shall be severable and if any phrase, clause, sentence, or provision of this Compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this Compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this Compact shall be held contrary to the constitution of any state party thereto, the Compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

"§ 7B-3801. Financial responsibility under Compact.

Financial responsibility for any child placed pursuant to the provisions of the Interstate Compact on the Placement of Children shall be determined in accordance with the provisions of Article V thereof in the first instance.

However, in the event of partial or complete default of performance thereunder, the provisions of any other state laws fixing responsibility for the support of children also may be invoked.

"§ 7B-3802. *Agreements under Compact.*

The officers and agencies of this State and its subdivisions having authority to place children are hereby empowered to enter into agreements with appropriate officers or agencies of or in other party states pursuant to paragraph (b) of Article V of the Interstate Compact on the Placement of Children. Any such agreement which contains a financial commitment or imposes a financial obligation on this State or subdivision or agency thereof shall not be binding unless it has the approval in writing of the Secretary of the Department of Health and Human Services in the case of the State and of the county director of social services in the case of a county or other subdivision of the State.

"§ 7B-3803. *Visitation, inspection or supervision.*

Any requirements for visitation, inspection or supervision of children, homes, institutions or other agencies in another party state which may apply under the laws of this State shall be deemed to be met if performed pursuant to an agreement entered into by appropriate officers or agencies of this State or a subdivision thereof as contemplated by paragraph (b) of Article V of the Interstate Compact on the Placement of Children.

"§ 7B-3804. *Compact to govern between party states.*

The provisions of Article 37 of this Chapter shall not apply to placements made pursuant to the Interstate Compact on the Placement of Children.

"§ 7B-3805. *Placement of delinquents.*

Any court having jurisdiction to place delinquent children may place such a child in an institution or in another state pursuant to Article VI of the Interstate Compact on the Placement of Children and shall retain jurisdiction as provided in Article V thereof.

"§ 7B-3806. *Compact Administrator.*

The Governor is hereby authorized to appoint a Compact Administrator in accordance with the terms of said Article VII."

PART IV. EMPLOYMENT DISCRIMINATION

Section 7. G.S. 95-241(a) reads as rewritten:

"(a) No person shall discriminate or take any retaliatory action against an employee because the employee in good faith does or threatens ~~to do any of the following:~~ to:

- (1) File a claim or complaint, initiate any inquiry, investigation, inspection, proceeding or other action, or testify or provide information to any person with respect to any of the following:
 - a. Chapter 97 of the General Statutes.
 - b. Article 2A or Article 16 of this Chapter.
 - c. Article 2A of Chapter 74 of the General Statutes.
 - d. G.S. 95-28.1.
 - e. Article 16 of Chapter 127A of the General Statutes.
 - f. G.S. 95-28.1A.
- (2) Cause any of the activities listed in subdivision (1) of this subsection to be initiated on an employee's behalf.

- (3) Exercise any right on behalf of the employee or any other employee afforded by Article 2A or Article 16 of this Chapter or by Article 2A of Chapter 74 of the General Statutes.
- (4) Comply with the provisions of Article 27 of Chapter 7B of the General Statutes."

PART V. EDUCATIONAL USE OF JUVENILE COURT INFORMATION

Section 8. G.S. 115C-404 reads as rewritten:

"§ 115C-404. Use of juvenile court information.

(a) ~~Written notifications received in accordance with G.S. 7A-675.1 G.S. 7B-3101 and information gained from examination of juvenile records in accordance with G.S. 7B-3100 are confidential records, are not public records as defined under G.S. 132-1, and shall not be made part of the student's official record under G.S. 115C-402. Immediately upon receipt, the principal shall maintain these documents in a safe, locked record storage that is separate from the student's other school records. The principal shall maintain these documents until the principal receives notification that the judge dismissed the petition under G.S. 7A-637, the judge transferred jurisdiction over the student to superior court under G.S. 7A-608, or the judge granted the student's petition for expunction of the records. At that time, the~~ The principal shall shred, burn, or otherwise destroy the documents received in accordance with G.S. 7B-3100 to protect the confidentiality of this information. the information when the principal receives notification that the court dismissed the petition under G.S. 7B-2411, the court transferred jurisdiction over the student to superior court under G.S. 7B-2200, or the court granted the student's petition for expunction of the records. The principal shall shred, burn, or otherwise destroy all information gained from examination of juvenile records in accordance with G.S. 7B-3100 when the principal finds that the school no longer needs the information to protect the safety of or to improve the educational opportunities for the student or others. In no case shall the principal make a copy of these documents.

(b) Documents received under this section ~~may~~ shall be used only to protect the safety of or to improve the education opportunities for the student or others. Information gained in accordance with G.S. 7B-3100 shall not be the sole basis for a decision to suspend or expel a student. Upon receipt of each document, the principal shall share the document with those individuals who have (i) direct guidance, teaching, or supervisory responsibility for the student, and (ii) a specific need to know in order to protect the safety of the student or others. Those individuals shall indicate in writing that they have read the document and that they agree to maintain its confidentiality. Failure to maintain the confidentiality of these documents as required by this section is grounds for the dismissal of an employee who is not a career employee and is grounds for dismissal of an employee who is a career employee, in accordance with G.S. 115C-325(e)(1)i.

(c) If the student graduates, withdraws from school, is suspended for the remainder of the school year, is expelled, or transfers to another school, the principal shall return the all documents not destroyed in accordance with subsection (a) of this section to the juvenile court counselor and, if

applicable, shall provide the counselor with the name and address of the school to which the student is transferring."

PART VI. CRIMINAL JUSTICE INFORMATION NETWORK CONFORMING CHANGES

Section 9. G.S. 143-661(a) reads as rewritten:

"(a) The Criminal Justice Information Network Governing Board is established within the Department of Justice, State Bureau of Investigation, to operate the State's Criminal Justice Information Network, the purpose of which shall be to provide the governmental and technical information systems infrastructure necessary for accomplishing State and local governmental public safety and justice functions in the most effective manner by appropriately and efficiently sharing criminal justice and juvenile justice information among law enforcement, judicial, and corrections agencies. The Board is established within the Department of Justice, State Bureau of Investigation, for organizational and budgetary purposes only and the Board shall exercise all of its statutory powers in this Article independent of control by the Department of Justice."

PART VII. SENTENCING COMMISSION DIRECTIVES

Section 10. (a) G.S. 164-36 reads as rewritten:

"§ 164-36. *Powers and duties.*

(a) Sentences established for violations of the State's criminal laws should be based on the established purposes of our criminal justice and corrections systems. The Commission shall evaluate sentencing laws and policies in relationship to both the stated purposes of the criminal justice and corrections systems and the availability of sentencing options. The Commission shall make recommendations to the General Assembly for the modification of sentencing laws and policies, and for the addition, deletion, or expansion of sentencing options as necessary to achieve policy goals. The Commission shall make a report of its recommendations, including any recommended legislation, to the General Assembly annually.

(b) Dispositions established for violations by juveniles of the State's criminal laws should be based on the established purposes set forth in Chapter 7B of the General Statutes. The Commission shall evaluate dispositional laws and policies in relationship to both the stated purposes of Chapter 7B of the General Statutes and the availability of dispositional alternatives. The Commission shall make recommendations to the General Assembly for the modification of dispositional laws and policies, and for the addition, deletion, or expansion of dispositional alternatives as necessary to achieve policy goals. The Commission shall make a report of its recommendations, including any recommended legislation, to the General Assembly annually."

(b) G.S. 164-40 reads as rewritten:

"§ 164-40. *Correction population simulation ~~model~~ model; Office of Juvenile Justice facilities population simulation model.*

(a) The Commission shall develop a correctional population simulation model, and shall have first priority to apply the model to a given fact situation, or theoretical change in the sentencing laws, when requested to do so by the Chairman, the Executive Director, or the Commission as a whole.

The Executive Director or the Chairman shall make the model available to respond to inquiries by any State legislator, or by the Secretary of the Department of Correction, in second priority to the work of the Commission.

(b) The Commission shall develop an Office of Juvenile Justice facilities population simulation model, and shall have first priority to apply the model to a given fact situation, or theoretical change in the dispositional laws set forth in Chapter 7B of the General Statutes, when requested to do so by the Chairman, the Executive Director, or the Commission as a whole.

The Executive Director or the Chairman shall make the model available to respond to inquiries by any State legislator, or by the Office of Juvenile Justice, in second priority to the work of the Commission."

(c) G.S. 164-42.1 reads as rewritten:

"§ 164-42.1. *Policy recommendations.*

(a) Using the studies of the Special Committee on Prisons, the Governor's Crime Commission, and other analyses, including testimony from representatives of the bodies that conducted the analyses, the Commission shall:

- (1) Determine the long-range needs of the criminal justice and corrections systems and recommend policy priorities for those systems;
- (2) Determine the long-range information needs of the criminal justice and corrections systems and acquire that information as it becomes available;
- (3) Identify critical problems in the criminal justice and corrections systems and recommend strategies to solve those problems;
- (4) Assess the cost-effectiveness of the use of State and local funds in the criminal justice and corrections systems;
- (5) Recommend the goals, priorities, and standards for the allocation of criminal justice and corrections funds;
- (6) Recommend means to improve the deterrent and rehabilitative capabilities of the criminal justice and corrections systems;
- (7) Propose plans, programs, and legislation for improving the effectiveness of the criminal justice and corrections systems;
- (8) Determine the sentencing structures for parole decisions;
- (9) Examine the impact of mandatory sentence lengths as opposed to the deterrent effect of minimum mandatory terms of imprisonment;
- (10) Examine good time and gain time practices;
- (11) Study the value of presentence reports;
- (12) Consider the rehabilitative potential of the offender and the appropriate rehabilitative placement;
- (13) Examine the impact of imprisonment on families of offenders;
- (14) Examine the impact of imprisonment on the ability of the offender to make restitution; and
- (15) Study the need for an amendment to Article XI, Section 1 of the State Constitution to include restitution, restraints on liberty, work programs, or other punishments to the list of punishments allowed under that section; and

- (16) Study the costs and consequences of criminal behavior in North Carolina and consider the value of preventing crimes by using incarceration to deter both prospective criminals and convicted criminals from future crimes.

(b) Using the studies and analyses available, including testimony from representatives of the bodies that conducted the analyses, the Commission shall:

- (1) Determine the long-range needs of the juvenile justice system and recommend policy priorities for that system;
- (2) Determine the long-range information needs of the juvenile justice system and acquire that information as it becomes available;
- (3) Identify critical problems in the juvenile justice system and recommend strategies to solve those problems;
- (4) Assess the cost-effectiveness of the use of State and local funds in the juvenile justice system; and
- (5) Recommend the goals, priorities, and standards for the allocation of juvenile justice funds."

(d) G.S. 164-43 reads as rewritten:

"§ 164-43. Priority of duties; reports; continuing duties.

(a) The Commission shall have two primary duties, and other secondary duties essential to accomplishing the primary ones. The Commission may establish subcommittees or advisory committees composed of Commission members to accomplish duties imposed by this Article.

It is the legislative intent that the Commission attach priority to accomplish the following primary duties:

- (1) The classification of criminal offenses as described in G.S. 164-41 and the formulation of sentencing structures as described in G.S. 164-42; and
- (2) The formulation of proposals and recommendations as described in G.S. 164-42.1 and G.S. 164-42.2.

(b) The Commission shall report its findings and recommendations to the 1991 General Assembly, 1991 Regular Session. The report shall describe the status of the Commission's work, and shall include any completed policy recommendations.

(c) The Commission shall report on its progress in formulating recommendations for the classification and ranges of punishment for felonies and misdemeanors, required by G.S. 164-41, and sentencing structures, established pursuant to G.S. 164-42, to the 1991 General Assembly, 1992 Regular Session, and shall make a final report on these recommendations no later than 30 days after the convening of the 1993 Session of the General Assembly.

(d) Once the primary duties of the Commission have been accomplished, it shall have the continuing duty to monitor and review the criminal justice and corrections systems and the juvenile justice system in this State to ensure that ~~sentencing remains~~ sentences and dispositions remain uniform and consistent, and that the goals and policies established by the State are being implemented by sentencing and dispositional practices, and it shall recommend methods by which this ongoing work may be accomplished and

by which the correctional population simulation model and the Office of Juvenile Justice facilities population simulation model developed pursuant to G.S. 164-40 shall continue to be used by the State.

(e) Upon adoption of a system for the classification of offenses formulated pursuant to G.S. 164-41, the Commission or its successor shall review all proposed legislation which creates a new criminal offense, changes the classification of an offense, or changes the range of punishment or dispositional level for a particular classification, and shall make recommendations to the General Assembly.

(f) In the case of a new criminal offense, the Commission or its successor shall determine whether the proposal places the offense in the correct classification, based upon the considerations and principles set out in G.S. 164-41. If the proposal does not assign the offense to a classification, it shall be the duty of the Commission or its successor to recommend the proper classification placement.

(g) In the case of proposed changes in the classification of an offense or changes in the range of punishment or dispositional level for a classification, the Commission or its successor shall determine whether such a proposed change is consistent with the considerations and principles set out in G.S. 164-41, and shall report its findings to the General Assembly.

(h) The Commission or its successor shall meet within 10 days after the last day for filing general bills in the General Assembly for the purpose of reviewing bills as described in subsections (e), (f), and (g). The Commission or its successor shall include in its report on a bill an analysis based on an application of the correctional population simulation model or the Office of Juvenile Justice facilities population simulation model to the provisions of the bill."

(e) G.S. 164-44 reads as rewritten:

"§ 164-44. *Statistical information; financial or other aid.*

(a) The Commission shall have the secondary duty of collecting, developing, and maintaining statistical data relating to ~~sentencing and corrections~~ sentencing, corrections, and juvenile justice so that the primary duties of the Commission will be formulated using data that is valid, accurate, and relevant to this State. All State agencies shall provide data as it is requested by the Commission. All meetings of the Commission shall be open to the public and the information presented to the Commission shall be available to any State agency or member of the General Assembly.

(b) The Commission shall have the authority to apply for, accept, and use any gifts, grants, or financial or other aid, in any form, from the federal government or any agency or instrumentality thereof, or from the State or from any other source including private associations, foundations, or corporations to accomplish any of the duties set out in this Chapter."

(f) G.S. 164-37 reads as rewritten:

"§ 164-37. *Membership; chairman; meetings; quorum.*

The Commission shall consist of ~~29~~ 30 members as follows:

- (1) The Chief Justice of the North Carolina Supreme Court shall appoint a sitting or former Justice or judge of the General Court of Justice, who shall serve as Chairman of the Commission;

- (2) The Chief Judge of the North Carolina Court of Appeals, or another judge on the Court of Appeals, serving as his designee;
- (3) The Secretary of Correction or his designee;
- (4) The Secretary of Crime Control and Public Safety or his designee;
- (5) The Chairman of the Parole Commission, or his designee;
- (6) The President of the Conference of Superior Court Judges or his designee;
- (7) The President of the District Court Judges Association or his designee;
- (8) The President of the North Carolina Sheriff's Association or his designee;
- (9) The President of the North Carolina Association of Chiefs of Police or his designee;
- (10) One member of the public at large, who is not currently licensed to practice law in North Carolina, to be appointed by the Governor;
- (11) One member to be appointed by the Lieutenant Governor;
- (12) Three members of the House of Representatives, to be appointed by the Speaker of the House;
- (13) Three members of the Senate, to be appointed by the President Pro Tempore of the Senate;
- (14) The President Pro Tempore of the Senate shall appoint the representative of the North Carolina Community Sentencing Association that is recommended by the President of that organization;
- (15) The Speaker of the House of Representatives shall appoint the member of the business community that is recommended by the President of the North Carolina Retail Merchants Association;
- (16) The Chief Justice of the North Carolina Supreme Court shall appoint the criminal defense attorney that is recommended by the President of the North Carolina Academy of Trial Lawyers;
- (17) The President of the Conference of District Attorneys or his designee;
- (18) The Lieutenant Governor shall appoint the member of the North Carolina Victim Assistance Network that is recommended by the President of that organization;
- (19) A rehabilitated former prison inmate, to be appointed by the Chairman of the Commission;
- (20) The President of the North Carolina Association of County Commissioners or his designee;
- (21) The Governor shall appoint the member of the academic community, with a background in criminal justice or corrections policy, that is recommended by the President of The University of North Carolina;
- (22) The Attorney General, or a member of his staff, to be appointed by the Attorney General;

- (23) The Governor shall appoint the member of the North Carolina Bar Association that is recommended by the President of that organization.
- (24) A member of the Justice Fellowship Task Force, who is a resident of North Carolina, to be appointed by the Chairman of the Commission.
- (25) The President of the Association of Clerks of Superior Court of North Carolina, or his designee.
- (26) A representative of the Office of Juvenile Justice.

The Commission shall have its initial meeting no later than September 1, 1990, at the call of the Chairman. The Commission shall meet a minimum of four regular meetings each year. The Commission may also hold special meetings at the call of the Chairman, or by any four members of the Commission, upon such notice and in such manner as may be fixed by the rules of the Commission. A majority of the members of the Commission shall constitute a quorum."

PART VIII. REGISTRATION OF CERTAIN JUVENILES

Section 11. Effective October 1, 1999, Article 25 of Chapter 7B of the General Statutes is amended by adding a new section to read:

"§ 7B-2508.1. Registration of certain delinquent juveniles.

In any case in which a juvenile, who was at least 11 years of age at the time of the offense, is adjudicated delinquent for committing a violation of G.S. 14-27.2 (first-degree rape), G.S. 14-27.3 (second degree rape), G.S. 14-27.4 (first-degree sexual offense), G.S. 14-27.5 (second degree sexual offense), or G.S. 14-27.6 (attempted rape or sexual offense), the judge, upon a finding that the juvenile is a danger to the community, may order that the juvenile register in accordance with Part 4 of Article 27A of Chapter 14 of the General Statutes."

PART IX. ALTERNATIVE LEARNING PROGRAMS ENCOURAGED

Section 12. G.S. 115C-47 is amended by adding the following new subdivision to read:

"(32a) To Develop Guidelines for Alternative Learning Programs. -- Local boards of education are encouraged to establish alternative learning programs. If these programs are established, local boards of education shall adopt guidelines for assigning students to them. These guidelines shall include (i) a description of the programs and services to be provided, (ii) a process for ensuring that an assignment is appropriate for the student and that the student's parents are involved in the decision, and (iii) strategies for providing alternative learning programs, when feasible and appropriate, for students who are subject to long-term suspension or expulsion. In developing these guidelines, local boards are encouraged to consider the State Board's guidelines developed under G.S. 115C-12(24). Upon adoption of guidelines under this subdivision, local boards are encouraged to incorporate them in their safe school plans developed under G.S. 115C-105.47."

PART X. CONFORMING STATUTORY CHANGES

Section 13. (a) G.S. 7A-451(a)(14) reads as rewritten:

"(14) A proceeding to terminate parental rights where a guardian ad litem is appointed pursuant to ~~G.S. 7A-289.23~~; G.S. 7B-1101;".

(b) G.S. 8-53.1 reads as rewritten:

"§ 8-53.1. *Physician-patient privilege waived in child abuse.*

Notwithstanding the provisions of G.S. 8-53, the physician-patient privilege shall not be ground for excluding evidence regarding the abuse or neglect of a child under the age of 16 years or regarding an illness of or injuries to such child or the cause thereof in any judicial proceeding related to a report pursuant to the North Carolina Juvenile Code, ~~Subchapter XI of Chapter 7A~~ 7B of the General Statutes of North Carolina."

(c) G.S. 8-53.3 reads as rewritten:

"§ 8-53.3. *Communications between psychologist and client or patient.*

No person, duly authorized as a licensed psychologist or licensed psychological associate, nor any of his or her employees or associates, shall be required to disclose any information which he or she may have acquired in the practice of psychology and which information was necessary to enable him or her to practice psychology. Any resident or presiding judge in the district in which the action is pending may, subject to G.S. 8-53.6, compel disclosure, either at the trial or prior thereto, if in his or her opinion disclosure is necessary to a proper administration of justice. If the case is in district court the judge shall be a district court judge, and if the case is in superior court the judge shall be a superior court judge.

Notwithstanding the provisions of this section, the psychologist-client or patient privilege shall not be grounds for failure to report suspected child abuse or neglect to the appropriate county department of social services, or for failure to report a disabled adult suspected to be in need of protective services to the appropriate county department of social services. Notwithstanding the provisions of this section, the psychologist-client or patient privilege shall not be grounds for excluding evidence regarding the abuse or neglect of a child, or an illness of or injuries to a child, or the cause thereof, or for excluding evidence regarding the abuse, neglect, or exploitation of a disabled adult, or an illness of or injuries to a disabled adult, or the cause thereof, in any judicial proceeding related to a report pursuant to the Child Abuse Reporting Law, ~~Article 44 of Chapter 7A~~, Article 3 of Chapter 7B of the General Statutes, or to the Protection of the Abused, Neglected, or Exploited Disabled Adult Act, Article 6 of Chapter 108A of the General Statutes."

(d) G.S. 8-57.1 reads as rewritten:

"§ 8-57.1. *Husband-wife privilege waived in child abuse.*

Notwithstanding the provisions of G.S. 8-56 and G.S. 8-57, the husband-wife privilege shall not be ground for excluding evidence regarding the abuse or neglect of a child under the age of 16 years or regarding an illness of or injuries to such child or the cause thereof in any judicial proceeding related to a report pursuant to the Child Abuse Reporting Law, ~~Article 8 of Chapter 110~~ Article 3 of Chapter 7B of the General Statutes of North Carolina."

(e) G.S. 14-208.6B reads as rewritten:

"§ 14-208.6B. *Registration requirements for juveniles transferred to and convicted in superior court.*

A juvenile transferred to superior court pursuant to ~~G.S. 7A-608~~ G.S. 7B-2200 who is convicted of a sexually violent offense or an offense against

a minor as defined in G.S. 14-208.6 shall register in accordance with this Article just as an adult convicted of the same offense must register."

(f) G.S. 15A-502(c) reads as rewritten:

"(c) This section does not authorize the taking of photographs or fingerprints of a juvenile alleged to be delinquent except under G.S. 7A-596 through 7A-601 and 7A-603. Article 21 of Chapter 7B of the General Statutes."

(g) G.S. 35A-1371 reads as rewritten:

"§ 35A-1371. *Jurisdiction; limits.*

Notwithstanding the provisions of Subchapter II of this Chapter, the clerk of superior court shall have original jurisdiction for the appointment of a standby guardian for a minor child under this Article. Provided that the clerk shall have no jurisdiction, no standby guardian may be appointed under this Article, and no designation may become effective under this Article when a district court has assumed jurisdiction over the minor child in an action under Chapter 50 of the General Statutes or in an abuse, neglect, or dependency proceeding under ~~Subchapter XI of Chapter 7A~~ Subchapter I of Chapter 7B of the General Statutes, or when a court in another state has assumed such jurisdiction under a comparable statute."

(h) G.S. 48-1-109(c) reads as rewritten:

"(c) An order for a report to the court must be sent to a county department of social services in this State or an agency licensed by the Department. If the petitioner moves to a different state before the agency completes the report, the agency shall request a report from an agency authorized to prepare such reports in the petitioner's new state of residence pursuant to the Interstate Compact on the Placement of Children, G.S. 110-57.1, et seq. Article 38 of Chapter 7B of the General Statutes."

(i) G.S. 48-2-102(b) reads as rewritten:

"(b) If an adoptee is also the subject of a pending proceeding under ~~Subchapter XI of Chapter 7A~~ Chapter 7B of the General Statutes, then the district court having jurisdiction under Chapter ~~7A~~ 7B shall retain jurisdiction until the final order of adoption is entered. The district court may waive jurisdiction for good cause."

(j) G.S. 48-3-201(d) reads as rewritten:

"(d) An agency having legal and physical custody of a minor may place the minor for adoption at any time after a relinquishment is executed by anyone as permitted by G.S. 48-3-701. The agency may place the minor for adoption even if other consents are required before an adoption can be granted, unless an individual whose consent is required notifies the agency in writing of the individual's objections before the placement. The agency shall act promptly after accepting a relinquishment to obtain all other necessary consents, relinquishments, or terminations of any guardian's authority pursuant to Chapter 35A of the General Statutes or parental rights pursuant to ~~Article 24B of Chapter 7A~~ Article 11 of Chapter 7B of the General Statutes."

(k) G.S. 48-2-304(c) reads as rewritten:

"(c) A petition to adopt a minor under Article 3 of this Chapter shall also state:

- (1) A description of the source of placement and the date of placement of the adoptee with the petitioner; and
- (2) That the provisions of the Interstate Compact on the Placement of Children, G.S. 110-57.1, et seq., Article 38 of Chapter 7B of the General Statutes, were followed if the adoptee was brought into this State from another state for purposes of adoption."

(l) G.S. 48-2-603 reads as rewritten:

"§ 48-2-603. *Hearing on, or disposition of, petition to adopt a minor.*

(a) At the hearing on, or disposition of, a petition to adopt a minor, the court shall grant the petition upon finding by a preponderance of the evidence that the adoption will serve the best interest of the adoptee, and that:

- (1) At least 90 days have elapsed since the filing of the petition for adoption, unless the court for cause waives this requirement;
- (2) The adoptee has been in the physical custody of the petitioner for at least 90 days, unless the court for cause waives this requirement;
- (3) Notice of the filing of the petition has been served on any person entitled to receive notice under Part 4 of this Article;
- (4) Each necessary consent, relinquishment, waiver, or judicial order terminating parental rights, has been obtained and filed with the court and the time for revocation has expired;
- (5) Any assessment required by this Chapter has been filed with and considered by the court;
- (6) If applicable, the requirements of the Interstate Compact on the Placement of Children, G.S. 110-57.1, et seq., Article 38 of Chapter 7B of the General Statutes, have been met;
- (7) Any motion to dismiss the proceeding has been denied;
- (8) Each petitioner is a suitable adoptive parent;
- (9) Any accounting and affidavit required under G.S. 48-2-602 has been reviewed by the court, and the court has denied, modified, or ordered reimbursement of any payment or disbursement that violates Article 10 or is unreasonable when compared with the expenses customarily incurred in connection with an adoption;
- (10) The petitioner has received information about the adoptee and the adoptee's biological family if required by G.S. 48-3-205; and
- (11) There has been substantial compliance with the provisions of this Chapter.

(b) If the Court finds a violation of this Chapter pursuant to Article 10 or of the Interstate Compact on the Placement of Children, G.S. 110-57.1, et seq., Article 38 of Chapter 7B of the General Statutes, but determines that in every other respect there has been substantial compliance with the provisions of this Chapter, and the adoption will serve the best interest of the adoptee, the court shall:

- (1) Grant the petition to adopt; and
- (2) Impose the sanctions provided by this Chapter against any individual or entity who has committed a prohibited act or report the violations to the appropriate legal authorities.

(c) The court on its own motion may continue the hearing for further evidence."

(m) G.S. 48-2-305(7) reads as rewritten:

"(7) Any signed copy of the form required by the Interstate Compact on the Placement of Children, ~~G.S. 110-57.1, et seq., Article 38 of Chapter 7B of the General Statutes,~~ authorizing a minor to come into this State;"

(n) G.S. 48-3-207 reads as rewritten:

"§ 48-3-207. *Interstate placements.*

An interstate placement of a minor for purposes of adoption shall comply with the Interstate Compact on the Placement of Children, ~~G.S. 110-57.1 et seq., Article 38 of Chapter 7B of the General Statutes.~~"

(o) G.S. 48-3-603(a)(1) reads as rewritten:

"(1) An individual whose parental rights and duties have been terminated under ~~Article 24B of Chapter 7A~~ Article 11 of Chapter 7B of the General Statutes or by a court of competent jurisdiction in another state;"

(p) G.S. 50-13.1(f) reads as rewritten:

"(f) Neither the mediator nor any party or other person involved in mediation sessions under this section shall be competent to testify to communications made during or in furtherance of such mediation sessions; provided, there is no privilege as to communications made in furtherance of a crime or fraud. Nothing in this subsection shall be construed as permitting an individual to obtain immunity from prosecution for criminal conduct or as excusing an individual from the reporting requirements of ~~G.S. 7A-543 Article 3 of Chapter 7B of the General Statutes~~ or G.S. 108A-102."

(q) G.S. 50A-25 reads as rewritten:

"§ 50A-25. *Emergency orders.*

Nothing in this Chapter shall be interpreted to limit the authority of the court to issue an interlocutory order under the provisions of G.S. 50-13.5(d)(2); or a secure or nonsecure custody order under the provisions of ~~G.S. 7A-573, G.S. 7B-502.~~"

(r) G.S. 50B-6 reads as rewritten:

"§ 50B-6. *Construction of Chapter.*

This Chapter shall not be construed as granting a status to any person for any purpose other than those expressly stated herein. This Chapter shall not be construed as relieving any person or institution of the duty to report to the department of social services, as required by ~~G.S. 7A-543, G.S. 7B-301,~~ if the person or institution has cause to suspect that a juvenile is abused or neglected."

(s) G.S. 51-2(a) reads as rewritten:

"(a) All unmarried persons of 18 years, or older, may lawfully marry, except as hereinafter forbidden. In addition, persons over 16 years of age and under 18 years of age may marry, and the register of deeds may issue a license for such marriage, only after there shall have been filed with the register of deeds a written consent to such marriage, said consent having been signed by the appropriate person as follows:

- (1) By the father if the male or female child applying to marry resides with his or her father, but not with his or her mother;
- (2) By the mother if the male or female child applying to marry resides with his or her mother, but not with his or her father;
- (3) By either the mother or father, without preference, if the male or female child applying to marry resides with his or her mother and father;
- (4) By a person, agency, or institution having legal custody, standing in loco parentis, or serving as guardian of such male or female child applying to marry.

Such written consent shall not be required for an emancipated minor if a certificate of emancipation issued pursuant to Article 56 of Chapter 7A, 35 of Chapter 7B of the General Statutes or a certified copy of a final decree or certificate of emancipation from this or any other jurisdiction is filed with the register of deeds."

(t) G.S. 90-21.6(1) reads as rewritten:

"(1) 'Unemancipated minor' or 'minor' means any person under the age of 18 who has not been married or has not been emancipated pursuant to Article 56 of Chapter 7A, 35 of Chapter 7B of the General Statutes."

(u) G.S. 90-21.8(f) reads as rewritten:

"(f) The court shall make written findings of fact and conclusions of law supporting its decision and shall order that a confidential record of the evidence be maintained. If the court finds that the minor has been a victim of incest, whether felonious or misdemeanor, it shall advise the Director of the Department of Social Services of its findings for further action pursuant to Article 44 of Chapter 7A, 3 of Chapter 7B of the General Statutes."

(v) G.S. 108A-14(a)(11) reads as rewritten:

"(11) To investigate reports of child abuse and neglect and to take appropriate action to protect such children pursuant to the Child Abuse Reporting Law, Article 44 of Chapter 7A; Article 3 of Chapter 7B of the General Statutes;".

(w) G.S. 110-102 reads as rewritten:

"§ 110-102. *Information for parents.*

The Secretary shall provide to each operator of a child care facility a summary of this Article for the parents, guardian, or full-time custodian of each child receiving child care in the facility to be distributed by the operator. The summary shall include the name and address of the Secretary and the address of the Commission. The summary shall also include a statement regarding the mandatory duty prescribed in G.S. 7A-543 G.S. 7B-301 of any person suspecting child abuse or neglect has taken place in child care, or elsewhere, to report to the county Department of Social Services. The statement shall include the definitions of child abuse and neglect described in the Juvenile Code in G.S. 7A-517 G.S. 7B-101 and of child abuse described in the Criminal Code in G.S. 14-318.2 and G.S. 14-318.4. The statement shall stress that this reporting law does not require that the person reporting reveal the person's identity."

(x) G.S. 110-105.2(a) reads as rewritten:

"(a) For purposes of this Article, child abuse and neglect, as defined in ~~G.S. 7A-517~~ G.S. 7B-101 and in G.S. 14-318.2 and G.S. 14-318.4, occurring in child care facilities, are violations of the licensure standards and of the licensure law."

(y) G.S. 110-147 reads as rewritten:

"§ 110-147. *Purpose.*

It is the expressed intent of this Article to make the prevention of child abuse and neglect as defined in ~~G.S. 7A-517~~, G.S. 7B-101, a priority of this State and to establish the Children's Trust Fund as a means to that end."

(z) G.S. 114-15.3 reads as rewritten:

"§ 114-15.3. *Investigations of child sexual abuse in child care.*

The Director of the Bureau may form a task force to investigate and gather evidence following a notification by the director of a county department of social services, pursuant to ~~G.S. 7A-543~~, G.S. 7B-301, that child sexual abuse may have occurred in a child care facility."

(aa) G.S. 115C-378 reads as rewritten:

"§ 115C-378. *Children required to attend.*

Every parent, guardian or other person in this State having charge or control of a child between the ages of seven and 16 years shall cause such child to attend school continuously for a period equal to the time which the public school to which the child is assigned shall be in session. Every parent, guardian, or other person in this State having charge or control of a child under age seven who is enrolled in a public school in grades kindergarten through two shall also cause such child to attend school continuously for a period equal to the time which the public school to which the child is assigned shall be in session unless the child has withdrawn from school. No person shall encourage, entice or counsel any such child to be unlawfully absent from school. The parent, guardian, or custodian of a child shall notify the school of the reason for each known absence of the child, in accordance with local school policy.

The principal, superintendent, or teacher who is in charge of such school shall have the right to excuse a child temporarily from attendance on account of sickness or other unavoidable cause which does not constitute unlawful absence as defined by the State Board of Education. The term 'school' as used herein is defined to embrace all public schools and such nonpublic schools as have teachers and curricula that are approved by the State Board of Education.

All nonpublic schools receiving and instructing children of a compulsory school age shall be required to keep such records of attendance and render such reports of the attendance of such children and maintain such minimum curriculum standards as are required of public schools; and attendance upon such schools, if the school refuses or neglects to keep such records or to render such reports, shall not be accepted in lieu of attendance upon the public school of the district to which the child shall be assigned: Provided, that instruction in a nonpublic school shall not be regarded as meeting the requirements of the law unless the courses of instruction run concurrently with the term of the public school in the district and extend for at least as long a term.

The principal or his designee shall notify the parent, guardian, or custodian of his child's excessive absences after the child has accumulated three unexcused absences in a school year. After not more than six unexcused absences, the principal shall notify the parent, guardian, or custodian by mail that he may be in violation of the Compulsory Attendance Law and may be prosecuted if the absences cannot be justified under the established attendance policies of the State and local boards of education. Once the parents are notified, the school attendance counselor shall work with the child and his family to analyze the causes of the absences and determine steps, including adjustment of the school program or obtaining supplemental services, to eliminate the problem. The attendance counselor may request that a law-enforcement officer accompany him if he believes that a home visit is necessary.

After 10 accumulated unexcused absences in a school year the principal shall review any report or investigation prepared under G.S. 115C-381 and shall confer with the student and his parent, guardian, or custodian if possible to determine whether the parent, guardian, or custodian has received notification pursuant to this section and made a good faith effort to comply with the law. If the principal determines that parent, guardian, or custodian has not, he shall notify the district attorney. If he determines that parent, guardian, or custodian has, he may file a complaint with the juvenile intake counselor ~~under G.S. 7A-561~~ pursuant to Chapter 7B of the General Statutes that the child is habitually absent from school without a valid excuse. Evidence that shows that the parents, guardian, or custodian were notified and that the child has accumulated 10 absences which cannot be justified under the established attendance policies of the local board shall establish a prima facie case that the child's parent, guardian, or custodian is responsible for the absences."

(bb) G.S. 115C-400 reads as rewritten:

"§ 115C-400. *School personnel to report child abuse.*

Any person who has cause to suspect child abuse or neglect has a duty to report the case of the child to the Director of Social Services of the county, as provided in ~~G.S. 7A-543 to 7A-552~~, Article 3 of Chapter 7B of the General Statutes."

(cc) G.S. 115C-404(a) reads as rewritten:

"(a) Written notifications received in accordance with ~~G.S. 7A-675.1~~ Article 31 of Chapter 7B of the General Statutes are confidential records, are not public records as defined under G.S.132-1, and shall not be made part of the student's official record under G.S. 115C-402. Immediately upon receipt, the principal shall maintain these documents in a safe, locked record storage that is separate from the student's other school records. The principal shall maintain these documents until the principal receives notification that the judge dismissed the ~~petition under G.S. 7A-637,~~ petition, the judge transferred jurisdiction over the student to superior ~~court~~ court ~~under G.S. 7A-608,~~ under G.S. 7A-608, court, or the judge granted the student's petition for expunction of the ~~records.~~ records pursuant to Chapter 7B of the General Statutes. At that time, the principal shall shred, burn, or otherwise destroy the documents to protect the confidentiality of this information. In no case shall the principal make a copy of these documents."

(dd) G.S. 122C-54(h) reads as rewritten:

"(h) A facility shall disclose confidential information for purposes of complying with Article ~~44 of Chapter 7A~~ 3 of Chapter 7B of the General Statutes and Article 6 of Chapter 108A of the General Statutes, or as required by other State or federal law."

(ee) G.S. 122C-66(e) reads as rewritten:

"(e) The duty imposed by this section is in addition to any duty imposed by G.S. ~~7A-543~~ 7B-301 or G.S. 108A-102."

(ff) G.S. 122C-223(c) reads as rewritten:

"(c) If the legally responsible person cannot be located within 72 hours of admission, the responsible professional shall initiate proceedings for juvenile protective services as described in Article ~~44 of Chapter 7A~~ 3 of Chapter 7B of the General Statutes in either the minor's county of residence or in the county in which the facility is located."

(gg) G.S. 122C-421(a) reads as rewritten:

"(a) The Secretary may designate one or more special police officers who shall make up a joint security force to enforce the law of North Carolina and any ordinance or regulation adopted pursuant to G.S. 143-116.6 or G.S. 143-116.7 or pursuant to the authority granted the Department by any other law on the territory of the Black Mountain Center, the Alcohol Rehabilitation Center, and the Juvenile Evaluation Center, all in Buncombe County. After taking the oath of office for law enforcement officers as set out in G.S. 11-11, these special police officers have the same powers as peace officers now vested in sheriffs within the territory embraced by the named centers. These special police officers shall also have the power prescribed by ~~G.S. 7A-571(a)(4)~~ G.S. 7B-1900 outside the territory embraced by the named centers but within the confines of Buncombe County. These special police officers may arrest persons outside the territory of the named centers but within the confines of Buncombe County when the person arrested has committed a criminal offense within that territory, for which the officers could have arrested the person within that territory, and the arrest is made during the person's immediate and continuous flight from that territory."

(hh) G.S. 131D-10.2(3) reads as rewritten:

"(3) 'Child' means an individual less than 18 years of age, who has not been emancipated under the provisions of ~~Article 56 of Chapter 7A~~ Article 35 of Chapter 7B of the General Statutes."

(ii) G.S. 131D-10.4(3) reads as rewritten:

"(3) Secure detention facilities as specified in Article ~~5 of Chapter 134A~~ 40 of Chapter 7B of the General Statutes;"

(jj) G.S. 132-1.4(l) reads as rewritten:

"(l) Records of investigations of alleged child abuse shall be governed by ~~G.S. 7A-675~~ Article 29 of Chapter 7B of the General Statutes."

(kk) G.S. 143-576(1) reads as rewritten:

"(1) Review current deaths of children when those deaths are attributed to child abuse or neglect or when the decedent was reported as an abused or neglected juvenile pursuant to ~~G.S. 7A-543~~ G.S. 7B-301 at any time before death;"

(ll) G.S. 143B-168.14(a)(3) reads as rewritten:

- "(3) Each local partnership shall adopt procedures to ensure that all personnel who provide services to young children and their families under this Part know and understand their responsibility to report suspected child abuse, neglect, or dependency, as defined in G.S. 7A-517, G.S. 7B-101."

(mm) G.S. 143B-496 reads as rewritten:

"§ 143B-496. *Definitions*.

For the purpose of this Part:

- (1) 'Missing child' means a juvenile as defined in G.S. 7A-517(20) 7B-101 whose location has not been determined, who has been reported as missing to a law-enforcement agency, and whose parent's, spouse's, guardian's or legal custodian's temporary or permanent residence is in North Carolina or is believed to be in North Carolina.
- (2) 'Missing person' means any individual who is 18 years of age or older, whose temporary or permanent residence is in North Carolina, or is believed to be in North Carolina, whose location has not been determined, and who has been reported as missing to a law-enforcement agency.
- (3) 'Missing person report' is a report prepared on a prescribed form for transmitting information about a missing person or a missing child to an appropriate law-enforcement agency."

(nn) G.S. 153A-221.1 reads as rewritten:

"§ 153A-221.1. *Standards and inspections*.

The legal responsibility of the Secretary of Health and Human Services and the Social Services Commission for State services to county juvenile detention homes under this Article is hereby confirmed and shall include the following: development of State standards under the prescribed procedures; inspection; consultation; technical assistance; and training. Further, the legal responsibility of the Department of Health and Human Services is hereby expanded to give said Department the same legal responsibility as to the State-administered regional detention homes which shall be developed by the State Department of Correction as provided by G.S. 134A-37, G.S. 7B-4008.

The Secretary of Health and Human Services shall develop new standards which shall be applicable to county detention homes and regional detention homes as defined by G.S. 134-36 Article 40 of Chapter 7B of the General Statutes in line with the recommendations of the report entitled Juvenile Detention in North Carolina: A Study Report (January, 1973) where practicable, and such new standards shall become effective not later than July 1, 1977.

The Secretary of Health and Human Services shall also develop standards under which a local jail may be approved as a holdover facility for not more than five calendar days pending placement in a juvenile detention home which meets State standards, providing the local jail is so arranged that any child placed in the holdover facility cannot converse with, see, or be seen by the adult population of the jail while in the holdover facility. The personnel responsible for the administration of a jail with an approved holdover facility

shall provide close supervision of any child placed in the holdover facility for the protection of the child."

(oo) If G.S. 143B-150.20 is enacted by Senate Bill 1366 of the 1997 General Assembly, then, effective July 1, 1999, G.S. 143B-150.20 is amended by deleting "G.S. 7A-675.1(d)" and substituting "G.S. 7B-2902(d)".

Section 14. Effective October 1, 1999, G.S. 14-208.31 reads as rewritten:

"§ 14-208.31. *File with Police Information Network.*

(a) The Division shall include the registration information in the Police Information Network as set forth in G.S. 114-10.1.

(b) The Division shall maintain the registration information permanently even after the registrant's reporting requirement expires; however, the records shall remain confidential in accordance with G.S. 7A-675, Article 32 of Chapter 7B of the General Statutes."

Section 15. G.S. 7A-302 reads as rewritten:

"§ 7A-302. *Counties and municipalities responsible for physical facilities.*

In each county in which a district court has been established, courtrooms courtrooms, office space for juvenile court counselors and support staff as assigned by the Office of Juvenile Justice, and related judicial facilities (including furniture), as defined in this Subchapter, shall be provided by the county, except that courtrooms and related judicial facilities may, with the approval of the Administrative Officer of the Courts, after consultation with county and municipal authorities, be provided by a municipality in the county. To assist a county or municipality in meeting the expense of providing courtrooms and related judicial facilities, a part of the costs of court, known as the 'facilities fee,' collected for the State by the clerk of superior court, shall be remitted to the county or municipality providing the facilities."

PART XI. DIRECTIVES, STUDIES, REPORTS AND TRAINING

Section 16. The Department of Justice shall revise the Division of Criminal Information's juvenile arrest form that is used by State and local law enforcement agencies to provide more realistic reporting options and case disposition information. The Department of Justice shall rename the "Juvenile Arrest" form the "Juvenile Contact Report". with instructions to law enforcement "Use to Record the Handling of Juveniles Who Commit Criminal Offenses" and shall amend the report based on the form included with Recommendation 51 of the March 10, 1998, final report of the Governor's Commission on Juvenile Crime and Justice.

Section 17. (a) The Department of Justice shall develop guidelines for minority sensitivity training for all law enforcement personnel throughout the State. The Department shall ensure that all persons who work with minority juveniles in the juvenile justice system are taught how to communicate effectively with minority juveniles and how to recognize and address the needs of those juveniles. The Department shall also advise all law enforcement and professionals who work within the juvenile justice system of ways to improve the treatment of minority juveniles so that all juveniles receive equal treatment. Except where local law enforcement has existing minority sensitivity training that meets the Department guidelines,

the Department shall conduct the minority sensitivity training annually. Prior to the training each year, the Department shall assess whether minorities are receiving fair and equal treatment in the juvenile justice system with regard to the administration of predisposition procedures, of diversion methods, of dispositional alternatives, and of treatment and post-release supervision plans.

(b) The Office of Juvenile Justice shall ensure that all juvenile court counselors and other Division personnel receive the minority sensitivity training specified in subsection (a) of this section. The Chief Justice of the North Carolina Supreme Court shall consider ensuring that all judges who hear cases under the jurisdiction of the juvenile court receive minority sensitivity training.

(c) All guidelines and training required by this section shall be in effect no later than May 1, 1999.

Section 18. (a) The Office of Juvenile Justice shall provide training for juvenile court counselors and all other Office personnel on the provisions of Chapter 7B of the General Statutes as enacted by this act and may contract with qualified educational institutions to provide such training.

(b) The Administrative Office of the Courts shall provide training for court personnel, including judges and district attorneys, on the provisions of Chapter 7B of the General Statutes as enacted by this act and may contract with qualified educational institutions to provide such training.

(c) The Department of Justice shall provide training for law enforcement personnel throughout the State on the provisions of Chapter 7B of the General Statutes as enacted by this act.

(d) Training of all existing personnel, pursuant to this section, shall be completed no later than July 1, 1999.

Section 19. The Legislative Research Commission may review the changes proposed to the juvenile justice system contained in House Bill 1561 and Senate Bill 1513 of the 1997 General Assembly. The study may include other issues relevant to the disposition of abuse, neglect, and dependency cases. The Legislative Research Commission shall report its findings, recommendations, and any legislative proposals to the 1999 General Assembly.

Section 20. (a) The State Board of Education shall study the feasibility and advisability of delaying the start of the school day in order to provide students with constructive projects and tasks during late afternoon hours of the school week. If the Board recommends that the school day be delayed, the Board shall consider whether the local school administrative units should provide supervision of students whose working parents do not have early morning child care available.

(b) The State Board of Education shall report its findings, recommendations, and any legislative proposals to the Joint Legislative Education Oversight Committee on or before May 1, 1999.

Section 21. (a) The Criminal Justice Information Network Governing Board created pursuant to Section 23.3 of Chapter 18 of the Session Laws of the 1996 Second Extra Session shall develop a juvenile justice information plan for creation of the juvenile justice information system. The plan shall ensure that the information system will enable the State to evaluate the

efficiency and effectiveness of the overall juvenile justice system as well as to monitor and evaluate the progress of individual clients and shall specify the:

- (1) Scope and purpose of the system;
- (2) Management information that will be collected and tracked;
- (3) General design of the system;
- (4) Estimates of the short- and long-range cost of the system and the potential sources and amounts of federal funding; and
- (5) Estimated time required to develop the system.

The plan shall include priorities for system development, implementation, and options, including cost estimates for phasing in components of the system. In developing the plan, the Criminal Justice Information Network Governing Board shall consult with the Information Resources Management Commission on the design and estimated cost of the system. The Board shall also consult with the Sentencing and Policy Advisory Commission and with all agencies likely to be part of or need access to the juvenile justice information system.

(b) Pursuant to the juvenile justice information plan, the Criminal Justice Information Network Governing Board shall develop a comprehensive juvenile justice information system. The Board shall develop a system to collect data and information about every juvenile who is alleged to be delinquent from the time a complaint is filed against the juvenile, including:

- (1) Fingerprints and photographs taken of the juvenile;
- (2) Diversion agreements or plans entered into by the juvenile;
- (3) Community services provided to the juvenile and any participation of the juvenile in community-based programs;
- (4) Court orders or dispositions of the juvenile; and
- (5) Plans for care or treatment or for post-release supervision prepared by the Office of Juvenile Justice.

The system shall allow for information and data on juveniles to be kept in a form to be shared among appropriate agencies to develop treatment and intervention plans based on specific data and to allow reliable assessment and evaluation of the effectiveness of rehabilitative and preventive services provided to delinquent juveniles.

(c) The Criminal Justice Information Network Governing Board shall also study the most appropriate methods and procedures for obtaining, retaining, and releasing fingerprints and photographs of juveniles alleged to be delinquent, including:

- (1) How to identify fingerprints and photographs of juveniles, including the use of social security numbers;
- (2) How long fingerprints and photographs of juveniles should be maintained in the criminal justice information system;
- (3) The extent to which juvenile fingerprints and photographs are kept confidential;
- (4) The circumstances or conditions under which juvenile fingerprints and photographs should be disseminated;
- (5) Whether juvenile fingerprints and photographs should be kept separate from adult records and files; and

(6) When the juvenile fingerprints and photographs should be destroyed.

(d) The Criminal Justice Information Network Governing Board shall consider the issue of expunction of juvenile records, including the appropriate length of time juvenile records should be available to law enforcement, prosecutors, and service providers and under what limitations and conditions records should be expunged.

(e) The Criminal Justice Information Network Governing Board shall report to the Chairs of the Senate and House Appropriations Committees and to the Fiscal Research Division of the General Assembly on the proposed system and any findings, recommendations, and legislative proposals from its study on or before May 1, 1999.

Section 22. (a) The Office of Juvenile Justice shall develop a cost-effective plan to establish statewide community-based dispositional alternatives for juveniles who are adjudicated delinquent. The plan shall include a funding strategy to encourage communities to provide local resources, services, and treatment options to meet the physical, emotional, and mental needs of juveniles and their families. In developing the plan, the Office shall consider the following community-based alternatives:

- (1) Home-based family counseling with family support groups that can provide required intervention services;
- (2) After-school activity programs for middle school juveniles targeted at potential at-risk juveniles during the time when most juvenile crimes occur;
- (3) Inpatient and outpatient substance abuse and sex offender treatment programs;
- (4) Intensive supervision of high-risk juveniles; and
- (5) Group homes with psychological treatment and programs for juveniles who do not pose a threat to the public but who need long-term intervention services.

In addition, in developing the plan, the Office shall recommend which judicial districts with high crime rates should have nonresidential day reporting centers to provide intensive supervision.

(b) The Office shall report to the Chairs of the Senate and House Appropriations Subcommittees on Justice and Public Safety and to the Fiscal Research Division of the General Assembly on the proposed plan, the cost of the plan, and on any legislative proposals required to implement the plan on or before April 1, 2000.

Section 23. (a) The Office of Juvenile Justice shall establish a phased-in 10-county pilot On Track program as an additional probation option for certain juvenile delinquents who are subject to Level 2 disposition. Juveniles enrolled in this program will be placed under the supervision of a special On Track court counselor as case manager for the juvenile. Every juvenile enrolled in the On Track program will be subjected to a risk and needs assessment, a responsibility contract, a restitution requirement, parental accountability, counseling attendance, and graduation upon completion of the program. The responsibility contract shall be signed by the juvenile, the juvenile's parents, guardian or custodian, and the On Track court counselor. The contract shall include the agreement of the

parties to restitution requirements, school attendance and appropriate school conduct, extracurricular school activity participation, obedience to parental supervision, counseling requirements, and requirements for abstinence from substance abuse. The program shall provide for intense intervention by the On Track court counselor. Each juvenile enrolled shall be assigned a trained mentor by the On Track court counselor.

(b) This section shall not become effective until funds are appropriated to implement this section.

Section 24. (a) The Office of Juvenile Justice shall establish three pilot Guard Response Alternative Sentencing Programs in three separate District Court Divisions as an additional probation option for certain first-time juvenile delinquents who are subject to Level 2 disposition through contract services.

(b) This section shall not become effective until funds are appropriated to implement this section.

Section 25. (a) The Administrative Office of the Courts shall establish pilot programs for the holding of family court within district court districts to be chosen by the Administrative Office of the Courts. Each pilot program shall be conducted following the guidelines for the establishment of family courts contained in the report of the Commission for the Future of Justice and the Courts in North Carolina and shall be assigned to hear all matters involving intrafamily rights, relationships, and obligations, and all juvenile justice matters, including:

- (1) Child abuse, neglect, and dependency;
- (2) Delinquent and undisciplined juvenile matters;
- (3) Emancipation of minors and termination of parental rights;
- (4) Divorce;
- (5) Annulment;
- (6) Equitable distribution;
- (7) Alimony and postseparation support;
- (8) Child custody;
- (9) Child support;
- (10) Paternity;
- (11) Adoption;
- (12) Domestic violence civil restraining orders;
- (13) Abortion consent waivers;
- (14) Adult protective services; and
- (15) Guardianship, involuntary commitment, and voluntary admissions to mental health facilities.

(b) The Administrative Office of the Courts shall report to the Chairs of the Senate and House Appropriations Subcommittees on Justice and Public Safety and to the Fiscal Research Division of the General Assembly by March 1, 2000, on the success of the pilot programs in bringing consistency, efficiency, and fairness to the resolution of family matters and on the impact of the programs on caseloads in the district court division.

(c) If no funds are appropriated in the 1998-99 fiscal year to implement this section, this section shall not become effective.

Section 26. (a) The General Assembly finds that there are multiple risk factors that put youth at risk of becoming delinquent, such as

aggression, school failure, child abuse and neglect, substance abuse, extreme economic deprivation, friends who engage in problem behavior, inconsistent and ineffective discipline, poor parental supervision, and family conflict. There are currently a number of screening programs available through a number of State and local entities that, if better coordinated, can provide adequate identification of delinquency risk factors so that delinquency prevention programs and services can be effective.

The General Assembly further finds that there are currently a number of State and local entities that provide delinquency prevention programs to at-risk youth and their families, including early intervention programs and programs improving cognitive and social competence and self-control skills, improving parenting skills, and providing positive role models. Many of these programs are already available and need only to be made more accessible and to be better coordinated with other existing programs and services.

(b) The Office of Juvenile Justice shall ensure that existing programs made available through a number of entities, both at the State and at the local level, that provide screenings that can provide adequate identification of delinquency risk factors, continue to be used in a consistent, coordinated, and cost-effective way so as to enable delinquency prevention programs and services to be utilized in a consistent, coordinated, and cost-effective way.

(c) In implementing this section, the Office shall cooperate with all affected State and local public and private entities, including local education agencies, local health departments, developmental evaluation centers, local departments of social services, the Division of Women and Children's Health, the Division of Social Services, and the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services of the Department of Health and Human Services, law enforcement agencies, and nonprofit agencies.

(d) The Office shall report to the General Assembly by April 1, 2000, on its implementation of this section. This report shall include an evaluation of the screenings and prevention programs, an identification of any bars in the law or in any agency's policy that preclude effective cooperation, together with any legislative and rule recommendations that are needed, recommendations as to any new screening or prevention programs and services that are needed, and a detailed cost analysis of these recommendations.

Section 27. (a) The Office of Juvenile Justice, in cooperation with the Department of Public Instruction, shall study more effective and efficient ways to:

- (1) Coordinate case management of delinquency and undisciplined cases;
- (2) Provide services to juveniles who are in need of treatment, counseling, or rehabilitation and to the families of those juveniles, including court-ordered parenting responsibility classes; and
- (3) Provide the maximum protection to the public and to local school administrative units, in particular, through the sharing of information between agencies that work with juveniles who are

delinquent or undisciplined and increased accountability of those juveniles and their parents.

(b) On or before April 1, 2000, the Office of Juvenile Justice and the Department of Public Instruction shall report its findings and recommendations, including any legislative proposals, to the General Assembly.

Section 28. The Office of Juvenile Justice shall use available funds to develop a risk and needs assessment instrument to be used to determine the treatment needs of delinquent juveniles and the risk that a delinquent juvenile will commit additional delinquent acts. The Office shall consider including the following factors in the instrument:

- (1) Information regarding the juvenile's living situation;
- (2) Information regarding drug or alcohol use by the juvenile or a member of the juvenile's household or immediate family;
- (3) Information regarding the juvenile's school attendance; and
- (4) Information regarding the juvenile's family, including any criminal history.

The Office shall present the recommended risk and needs assessment instrument to the Joint Legislative Commission on Governmental Operations by May 1, 1999.

Section 29. The Office of Juvenile Justice shall use funds within its budget to evaluate the effectiveness of the reform measures implemented pursuant to the provisions of this act. The Office shall report the results of the evaluation and any recommended legislative amendments to Chapter 7B of the General Statutes to the Joint Legislative Commission on Governmental Operations by October 1, 2000.

Section 30. The Office of Juvenile Justice in consultation with the North Carolina Sentencing and Policy Advisory Commission shall study blended sentencing and direct filing in certain juvenile cases. The study shall include, among other issues, consideration of whether North Carolina should adopt a criminal-inclusive model of blended sentencing whereby (i) a presiding superior court judge may simultaneously impose a juvenile disposition and an adult criminal disposition upon a juvenile transferred to superior court, and (ii) execution of the adult criminal disposition is suspended during imposition of the juvenile disposition and pending a violation or reoffense by the juvenile. The study shall examine various models of blended sentencing, and may include a comprehensive survey of other states that have adopted variations of blended sentencing. The study shall also examine whether a prosecutor should have the authority to directly charge a juvenile as an adult in the case of 15-year-olds who have committed Class A-E felonies. The Office shall report the results of the study, including any legislative recommendations, to the General Assembly no later than March 15, 2000.

Section 31. The Office of Juvenile Justice, in cooperation with the Department of Health and Human Services, shall study the funding process for juvenile delinquency and substance abuse prevention programs provided for in this act. The study shall consider whether the process should be designed in such a way that funds are allocated to a program for a specific juvenile being served by the program, and whether the allocated funding

should then follow that juvenile. The Office shall also consider whether a county should continue to fund services for a juvenile who has been receiving delinquency prevention services and is subsequently adjudicated delinquent and committed to training school, and whether, if still appropriate to reduce the recidivism risk, the county should send the program dollars to the training school. The Office shall report its findings and recommendations, by May 1, 1999, to the Fiscal Research Division of the General Assembly and to the Chairs of the House and Senate Appropriations Committees and to the Chairs of the Appropriations Subcommittees on Human Resources.

Section 32. The State Board of Education, through the Department of Public Instruction, shall study and report to the General Assembly on ways for the State to provide an alternative educational program for any student suspended or expelled from school. This study shall include (i) a review of current safe school plans and alternative educational programs, (ii) an analysis of current data on suspensions and expulsions, (iii) an assessment of federal, state, local, and private resources currently available to provide an educational program for students suspended or expelled from school, (iv) research of other educational programs offered by other State agencies, (v) a review of current law related to suspension and expulsion from school and the right to a public education, (vi) recommendations for a plan and timetable for implementing alternative educational programs for every student suspended or expelled from school, and (vii) a review of policies and procedures for transporting aggressive or assaultive students with other students, including disabled students, and development of a plan to insure the protection of all students, particularly disabled students from physical harm by aggressive or assaultive students. The State Board of Education shall report the results of this study, including any legislative recommendations, to the Joint Legislative Education Oversight Committee by May 1, 1999.

Section 33. The Office of Juvenile Justice shall use funds within its budget to study the overrepresentation of racial minorities in the juvenile justice system. The Office shall compare the dispositions for minority juveniles adjudicated delinquent or undisciplined with the dispositions for nonminority juveniles. The Office shall also compare the services made available to minority and nonminority juveniles and their families. To the extent that inequities are found, the Office shall make recommendations, including any legislative proposals, as to how those disparities should be addressed. The Office may hire an outside consultant to assist it with its work.

The Office shall report annually, no later than May 1, to the Governor, Chief Justice, and the General Assembly on any findings, recommendations, or legislative proposals. The Office shall make its final report to the Governor, Chief Justice, and the General Assembly no later than May 1, 2002.

Section 34. The Office of Juvenile Justice shall use funds within its budget to study the use of detention facilities and make recommendations as to how those detention facilities could be utilized more efficiently. The study shall include a statistical analysis of the number of juveniles housed in

detention facilities, the reasons for their detention, the length of their stays, and the numbers and frequency that juveniles are detained in adult jails. The Office shall report its findings and recommendations by May 1, 1999, and again by January 15, 2001, to the Fiscal Research Division of the General Assembly and the Chairs of the House and Senate Appropriations Committees.

PART XII. FACILITIES CONSTRUCTION

Section 35. (a) The Office of State Construction of the Department of Administration may contract for and supervise all aspects of administration, technical assistance, design, construction, or demolition of any juvenile facilities authorized for the 1998-99 fiscal year, including renovation of existing adult facilities to juvenile facilities.

The facilities authorized for the 1998-99 fiscal year shall be constructed in accordance with the provisions of general law applicable to the construction of State facilities. If the Secretary of Administration, after consultation with the Office of Juvenile Justice, finds that the delivery of juvenile facilities must be expedited for good cause, the Office of State Construction of the Department of Administration shall be exempt from the following statutes and rules implementing those statutes, to the extent necessary to expedite delivery: G.S. 143-135.26, 143-128, 143-129, 143-131, 143-132, 143-134, 113A-1 through 113A-10, 113A-50 through 113A-66, 133-1.1(g), and 143-408.1 through 143-408.7.

Prior to exercising the exemptions allowable under this section, the Secretary of Administration shall give reasonable notice in writing of the Department's intent to exercise the exemptions to the Speaker of the House, the President Pro Tempore of the Senate, the Chairs of the House and Senate Appropriations Committees, the Joint Legislative Commission on Governmental Operations, and the Fiscal Research Division. The written notice shall contain at least the following information: (i) the specific statutory requirement or requirements from which the Department intends to exempt itself; (ii) the reason the exemption is necessary to expedite delivery of juvenile facilities; (iii) the way in which the Department anticipates the exemption will expedite the delivery of facilities; and (iv) a brief summary of the proposed contract for the project which is to be exempted.

The Office of State Construction of the Department of Administration shall have a verifiable ten percent (10%) goal for participation by minority and women-owned businesses. All contracts for the design, construction, or demolition of juvenile facilities shall include a penalty for failure to complete the work by a specified date.

The Office of State Construction of the Department of Administration shall consult the Department of Health and Human Services on these projects to the extent that such involvement relates to the Department's program needs and to its responsibility for the care of the population of the facility.

(b) The Office of State Construction of the Department of Administration shall provide a report by May 1, 1999, to the Chairs of the Senate and House Appropriations Committees, the Joint Legislative Commission on Governmental Operations, and the Fiscal Research Division as to any changes in projects and allocations authorized for the 1998-99

fiscal year. The report shall include information on which contractors have been selected, what contracts have been entered into, the projected and actual occupancy dates of facilities contracted for, the number of beds to be constructed on each project, the location of each project, and the projected and actual cost of each project.

PART XIII. SEVERABILITY CLAUSE

Section 36. If any section or provision of this act is declared unconstitutional or invalid by the courts, it does not affect the validity of this act as a whole or any part other than the part so declared to be unconstitutional or invalid.

PART XIV. EFFECTIVE DATES

Section 37. (a) Sections 1, 3, 4, 15, 18, 22, 23, 24, 26 through 31, 33, and 34 of this act become effective January 1, 1999, and apply to acts committed on or after that date.

(b) Sections 2, 5 through 10, 12, and 13 of this act become effective July 1, 1999, and apply to acts committed on or after that date.

(c) Sections 11 and 14 of this act become effective October 1, 1999.

(d) The remainder of this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 22nd day of October, 1998.

Became law upon approval of the Governor at 10:45 a.m. on the 27th day of October, 1998.

H.B. 1629

SESSION LAW 1998-203

AN ACT TO REMOVE AN AREA FROM THE CORPORATE LIMITS OF THE CITY OF ASHEBORO, TO ANNEX AN AREA AS DESCRIBED INTO THE CORPORATE LIMITS OF THE CITY OF ASHEBORO, AND GIVE ADDITIONAL AUTHORITY TO THAT CITY TO MAKE VOLUNTARY SATELLITE ANNEXATIONS.

The General Assembly of North Carolina enacts:

Section 1. (a) The following described territory is removed from the corporate limits of the City of Asheboro:

Lying and being in Franklinville Township, Randolph County, North Carolina:

BEGINNING at a point in the west right-of-way line of Henley Country Road (NCSR 2215), said point being also located at North Carolina Grid Coordinates North = 731.316.884 and East = 1.770.498.738 (NAD 27); thence from said beginning point the following courses and distances along the west right-of-way line of Henley Country Road: South 24 degrees 52 minutes 14 seconds East 142.66 feet to a point. South 23 degrees 00 minutes 08 seconds East 138.13 feet to a point. South 19 degrees 40 minutes 50 seconds East 325.13 feet to a point. South 14 degrees 35 minutes 16 seconds East 57.32 feet to a point. South 09 degrees 38 minutes 38 seconds East 104.07 feet to a point. South 04 degrees 42 minutes 37 seconds East 88.53 feet to a point. South 00 degrees 09 minutes 31 seconds East 92.51 feet to a point and South 09 degrees 10 minutes 54 seconds West

100.42 feet to an existing iron pipe, in Michael Glass' line in the west right-of-way of Henley Country Road; thence the following courses and distances along Michael Glass' line: North 54 degrees 38 minutes 39 seconds West 188.23 feet to an existing iron rod, North 63 degrees 54 minutes 37 seconds West 44.32 feet to an existing iron rod, North 69 degrees 18 minutes 05 seconds West 21.50 feet to an existing iron rod at a control corner and South 28 degrees 55 minutes 31 seconds West 514.60 feet to an existing iron rod at a control corner in the line of R. B. York, Jr.; thence North 89 degrees 22 minutes 52 seconds West, along York's line, 779.05 feet to an existing iron pipe and stones in the centerline of Lick Branch; thence the following courses and distances along the centerline of Lick Branch: North 28 degrees 16 minutes 09 seconds East 69.15 feet to a point, North 23 degrees 29 minutes 58 seconds West 63.98 feet to a point, North 45 degrees 00 minutes 12 seconds East 79.02 feet to a point, North 74 degrees 24 minutes 27 seconds East 56.85 feet to a point, North 17 degrees 01 minute 35 seconds East 130.33 feet to a point, North 05 degrees 32 minutes 53 seconds East 124.74 feet to a point, North 27 degrees 53 minutes 19 seconds East 58.11 feet to a point, North 38 degrees 04 minutes 18 seconds West 28.91 feet to a point, North 13 degrees 07 minutes 00 seconds West 72.23 feet to a point, North 16 degrees 06 minutes 34 seconds East 33.82 feet to a point, North 59 degrees 09 minutes 21 seconds East 57.23 feet to a point, North 19 degrees 25 minutes 06 seconds East 68.97 feet to a point, South 89 degrees 14 minutes 44 seconds East 66.42 feet to a point, North 21 degrees 27 minutes 58 seconds East 53.83 feet to a point, North 38 degrees 48 minutes 09 seconds East 60.19 feet to a point, North 07 degrees 38 minutes 50 seconds East 107.44 feet to a point, North 24 degrees 41 minutes 42 seconds West 148.64 feet to a point and North 29 degrees 50 minutes 48 seconds West 34.78 feet to a point; thence North 48 degrees 47 minutes 46 seconds East 289.38 feet to an existing iron rod; thence south 46 degrees 25 minutes 26 seconds East 130.67 feet to an existing iron rod; thence North 32 degrees 16 minutes 04 seconds East 184.55 feet to an existing iron rod at a corner with W. R. Craven, Jr.; thence along Craven's line South 48 degrees 46 minutes 16 seconds East 224.27 feet to an existing iron pipe and North 43 degrees 39 minutes 17 seconds East 164.71 feet to the point and place of Beginning, containing 24.634 acres.

This description is in accordance with a survey entitled "Annexation Map for the City of Asheboro", dated October 6, 1997, prepared by Philip M. Henley, and designated as Job No. S-4303.

(b) From and after the effective date of this section, the real and personal property in the area described in subsection (a) of this section shall not be subject to taxes of the City of Asheboro.

Section 2. The following described territory is added to the corporate limits of the City of Asheboro:

BEGINNING at an existing iron pipe in the south right-of-way line of Pilots View Road (State Road #1197), said iron pipe being also located in the city limits line of the City of Asheboro; thence from said beginning point South 61 degrees 21 minutes 00 seconds East, along the south right-of-way line of Pilots View Road, 200.00 feet to a corner not set; thence South 22 degrees 05 minutes 00 seconds West 1,549.23 feet to a corner not set within

the City of Asheboro property; thence North 67 degrees 55 minutes 00 seconds West 771.17 feet to an existing iron pipe in the present city limits line; thence along the present city limits line, the following courses and distances: North 22 degrees 05 minutes 00 seconds East 1,638.00 feet to an existing iron pipe and South 61 degrees 21 minutes 00 seconds East 576.26 feet to the point and place of Beginning, containing 28.213 acres, more or less.

This description is in accordance with a survey entitled "Asheboro Municipal Airport Annexation Map", dated June 17, 1998, prepared by Jack R. Ragland, R. L. S., and designated as Job No. 1355.

Section 3. (a) G.S. 160A-58.1(b)(5) reads as rewritten:

"(5) The area within the proposed satellite corporate limits, when added to the area within all other satellite corporate limits, may not exceed ~~ten percent (10%)~~ twenty percent (20%) of the area within the primary corporate limits of the annexing city."

(b) This section applies to the City of Asheboro only.

Section 4. This act is effective when it becomes law, except that Section 1 becomes effective November 6, 1997.

In the General Assembly read three times and ratified this the 27th day of October, 1998.

Became law on the date it was ratified.

S.B. 1424

SESSION LAW 1998-204

AN ACT TO PROVIDE THAT CABARRUS MEMORIAL HOSPITAL MAY AWARD A BACCALAUREATE DEGREE TO GRADUATES OF ITS NURSING AND ALLIED HEALTH SCIENCES PROGRAMS AS APPROPRIATE.

The General Assembly of North Carolina enacts:

Section 1. Section 11 of Chapter 307, Public-Local Laws of 1935, as amended by Chapter 947 of the 1987 Session Laws, is amended by rewriting that section to read:

"Sec. 11. ~~The executive committee~~ Notwithstanding G.S. 116-15, the Executive Committee of Cabarrus Memorial Hospital may establish and maintain in connection therewith with and as a part of said the hospital a training school for nurses, an educational program for nursing and allied health sciences. The Executive Committee may award an Associate ~~Degree~~ Degree or Baccalaureate Degree to graduates of the nursing education ~~program, or allied health sciences programs as appropriate.~~"

Section 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 27th day of October, 1998.

Became law on the date it was ratified.





